48/chap. 2/pt. 201-251/990

code of federal regulations

Federal Acquisition Regulations System

48

CHAPTER 2 (Parts 201 TO 251)
Revised as of October 1, 1990

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Federal Acquisition Regulations System

48

CHAPTER 2 (Parts 201 to 251)

Revised as of October 1, 1990

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1990

With Ancillaries

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1985

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 48 CFR 201.101 *refers to title 48, part 201, section 101.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, October 1, 1990), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of "Title 3—The President" is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

REPUBLICATION OF MATERIAL

There are no restrictions on the republication of material appearing in the Code of Federal Regulations.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

MARTHA L. GIRARD,
Director,
Office of the Federal Register.

October 1, 1990.

THIS TITLE

Title 48—**Federal Acquisition Regulations System** is composed of seven volumes. The chapters in these volumes contain all current regulations and are arranged as follows: Chapter 1 (Parts 1 to 51), Chapter 1 (Parts 52 to 99), Chapter 2 (Parts 201 to 251), Chapter 2 (Parts 252 to 299), Chapters 3 to 6, Chapters 7 to 14 and Chapter 15 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of October 1, 1990.

The Federal acquisition regulations in Chapter 1 are those government-wide acquisition regulations jointly issued by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. Chapter 2 through end are acquisition regulations issued by individual government agencies. Parts 1 to 69 in each of Chapter 2 through end are reserved for agency regulations *implementing* the Federal acquisition regulations in Chapter 1 and are numerically keyed to them. Parts 70 to 99 in Chapter 2 through end contain agency regulations *supplementing* the Federal acquisition regulations.

The OMB control numbers for the Federal Acquisition Regulations System appear in § 1.105 of Chapter 1. For the convenience of the user § 1.105 is reprinted in the Finding Aids section of the second volume containing Chapter 1 (Parts 52 to 99).

The two volumes containing Chapter 1 include a subject index to the Federal acquisition regulations. The second volume, containing Chapter 1 (Parts 52 to 99), includes contract clauses and forms. The volume containing Chapter 2 also contains a subject index to the Department of Defense regulations. The volume containing Chapters 7 to 14 includes a Distribution Table for Chapter 9.

For this volume Jim Wickliffe was Chief Editor. The Code of Federal Regulations publication program is under the direction of Richard L. Claypoole, assisted by Alomha S. Morris.

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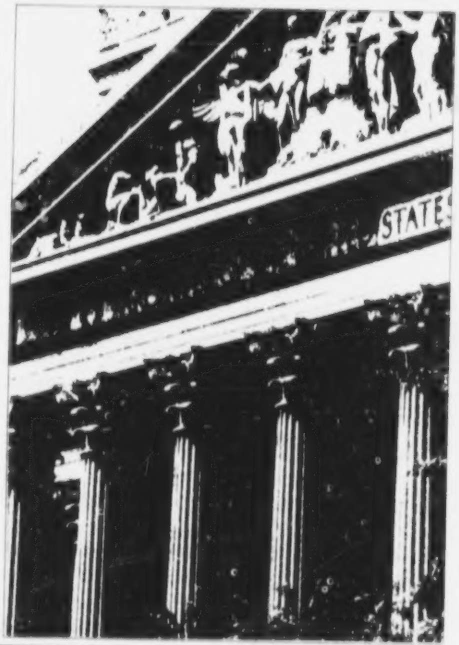

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EDITORIAL NOTE: The Department of Defense Acquisition Regulations are continued in the volume containing 48 CFR chapter 2, parts 252 to 299.

EDITORIAL NOTE: The text of the Manuals and Supplements to the DoD FAR Supplement are not published in the Code of Federal Regulations. The list set forth below is for the convenience of the user.

Manuals

Armed Services Pricing Manual (1986).
Armed Services Pricing Manual, Volume 2, Price Analysis (1987).
Small Purchase Manual (ASPM No. 2) (31 MAR 76).

Supplements

DAR Supplement No. 1—Contractor Purchasing System Review (CPSR) Program (DARS No. 1) (31 MAR 82).
ASPR Supplement No. 3—Property Administration (ASPS No. 3) (1 OCT 75).

Department of Defense

ASPR Supplement No. 4—Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists (ASPS No. 4) (1 APR 68).

ASPR Supplement No. 5—Procurement of Utility Services (ASPS No. 5) (1 OCT 74).

DAR Supplement No. 6—DoD Replenishment Parts Breakout Program (DARS No. 6) (1 JUN 83).

SUBCHAPTER A—GENERAL

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46069, Dec. 23, 1986, unless otherwise noted.

Subpart 201.1—Purpose, Authority, Issuance

201.101 Purpose.

The Department of Defense FAR Supplement is issued by the Assistant Secretary of Defense for Acquisition and Logistics by direction of the Secretary of Defense and in coordination with the Secretaries of the Army, Navy and Air Force, and the Director of the Defense Logistics Agency. It establishes for the Department of Defense uniform policies and procedures, implementing and supplementing the Federal Acquisition Regulation.

201.103 Applicability.

(a) This supplement applies to all purchases and contracts made within and outside the United States (but see 201.405) for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations). This supplement and the FAR also apply to purchases and contracts by DoD contracting activities made in support of foreign military sales or NATO cooperative projects without regard to the nature or sources of funds obligated, unless otherwise specified in this regulation.

(b) Neither the FAR nor this supplement applies to transportation services purchased by transportation requests, transportation warrants, bills of lading, and similar transportation forms. Purchase of these excepted transportation services shall be in accordance with specific regulations and instructions issued by the Military Traffic Management Command, Military Sealift Command, Military Airlift Command, and the Departments.

[51 FR 46069, Dec. 23, 1986, as amended at 53 FR 38179, Sept. 29, 1988]

201.104 Issuance.

201.104-1 Publication and code arrangement.

This regulation is issued as Chapter 2 of title 48, CFR. Other chapters are reserved for Departmental acquisition regulations that implement or supplement this regulation. It is also available in a loose-leaf edition.

201.104-2 Arrangement of regulations.

(a) This regulation is numbered according to whether the information implements or supplements the FAR. The differentiation is made by using the numbers 70-89 as new parts, subparts, sections, or subsections when supplementation is required. Implementing coverage uses the same numbers as the FAR material implemented. Numbers 1-69 have been reserved to the FAR. A series of numbers beginning with 7000 is used for provisions and clauses.

(1) A new part 270 is used in the DoD FAR Supplement for new material which is not covered by the FAR and is a distinct part only applicable to the Department of Defense.

(2) A new subpart 225.72 could be used as the third subpart supplementing FAR part 25, with subparts 225.70 and 225.71 having preceded it.

(3) A new section 225.173 could be used as the fourth section supplementing FAR sections that begin with 225.101. In this case, the FAR can only be numbered through 225.169.

(4) A new subsection 225.101-79 could be used as the 10th subsection supplementing FAR subsections that begin with FAR 225.101-1.

(5) A new subsection 252.225-7001 could be used as the second clause supplementing the FAR clauses prescribed by part 25 beginning with 52.225-1. The number 7000 is used because of the potential existence of more than 20 clauses supplementing a given part over the lifetime of the FAR.

(6) Departmental supplementation of the FAR or this regulation will use the same rules, except that numbers 90 and above are reserved for supplementary material, and 9000 and above are reserved for supplementary clauses.

(c) *References and citations.* (2) This regulation may be referred to as the Department of Defense Federal Acquisition Regulation Supplement, the DoD FAR Supplement, or the DFARS. Cross reference to the FAR in this regulation will cite "FAR" followed by the appropriate part, subpart, etc. References to this regulation will be without a name or acronym prefix. References to FAR citations in this supplement should be read to include the corresponding paragraphs of this supplement and any additional authorizations, restrictions, policies or procedures they may contain. For example, the words ". . . when authorized under FAR part 25 . . ." include authorities granted under both FAR part 25 and part 225 of this supplement.

201.104-3 Copies.

Copies of the DoD FAR Supplement in loose-leaf and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

Subpart 201.2—Administration

201.201 Maintenance of the FAR.

201.201-1 The two councils.

(a) The Defense Acquisition Regulatory (DAR) Council shall maintain the FAR and the DoD FAR Supplement.

(c) The composition and operation of the DAR Council shall be as prescribed by DoD Directive 5000.35.

Subpart 201.3—Agency Acquisition Regulations

201.301 Policy.

(S-70) *Defense Acquisition Circulars.* (1) In accordance with the authority in FAR 1.301, a Defense Acquisition Circular, supplementary to this regulation, shall be published as often as may be necessary or advisable for distribution to all recipients of this regulation. Material to be published in each Defense Acquisition Circular shall first be approved by the Defense Acquisition Regulatory Council.

(2) The purposes of the Defense Acquisition Circular are:

(i) To promulgate as rapidly as possible selected material revising this regulation.

(ii) To disseminate material applicable to procurement which is not suitable for insertion in this regulation, but which may have the effect of a directive to, or be of importance and interest to its recipients; and

(iii) To supplement this regulation as may be necessary to reduce the size and frequency of issue of subsidiary Departmental procurement instructions.

(3) Unless otherwise indicated in the introductory language preceding an item, each item in Defense Acquisition

Circulars will remain in effect until specifically canceled.

(4) Statements in Defense Acquisition Circulars to the effect that the material published therein is "effective upon receipt" or upon a specified date, or that changes set forth in the circular are "to be used upon receipt," mean that any new or revised clauses or forms included in the circular shall be included in invitations for bids and requests for proposal issued thereafter, unless a different meaning is expressed in the circular. However, unless otherwise provided in the circular, the new or revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(5) As a convenience to the Departments and to insure early and wide dissemination, selected DoD policy promulgations of general interest to contracting activities are republished as DAC items. Unless otherwise indicated, subsequent cancellation of such DAC items is not to be construed as cancellation of the underlying policy. Cancellation of such policy will normally be accomplished by separate and specific OSD action.

201.304 Agency control and compliance procedures.

(b) (1) The Departments and their subordinate organizations shall not issue instructions (including directives, regulations, policies, or procedures), contract forms or contract clauses implementing or supplementing the FAR or this regulation, unless permitted by one of the following and if consistent with (b)(2) below:

(i) Internal procurement management instructions, such as designations and delegations of authority, assignments of responsibilities; work flow procedures, and internal reporting requirements;

(ii) Any special contract clause of a nonrepetitive nature designed specifically to accomplish the peculiar requirements of an individual procurement, provided a clause relating to the subject matter is not set forth in the FAR or this regulation.

(iii) A variation of any contract clause which is set forth in the FAR or this regulation but not for use verbatim, provided that such variation is not inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(iv) Interim instructions, including service test of new techniques or methods of procurement, having an effective duration not exceeding six months (unless approved for a longer period by the DAR Council) which are essential:

(A) To meet current operational needs, provided the instructions are submitted prior to issuance or immediately thereafter for consideration by the DAR Council; or

(B) To effect greater efficiency in procurement management, provided the instructions authorized are submitted for approval of the DAR Council prior to issuance;

(v) Procurement procedures specifically identified as being essential for carrying out the peculiar needs of specialized commodity areas when authorized by: for the Army, Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research, Development and Acquisition); for the Navy, Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; for the Air Force, Director of Contracting and Manufacturing, Office of the Deputy Chief of Staff (Research, Development and Acquisition); for the Defense Logistics Agency, Executive Director, Contracting, or the Executive Director for Contract Management; for the National Security Agency, the Director; for the Defense Communications Agency, the Director; for the Defense Nuclear Agency, the Deputy Director, Operations and Administration; for the Defense Mapping Agency, the Staff Director of Logistics; and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such procedures should be included in this regulation, or the FAR;

(vi) Procurement instructions specifically identified as being essential for carrying out the peculiar needs of overseas commands when authorized by the cognizant unified commander and notification is given to the DAR Council immediately upon such authorization for the purpose of determining whether such instructions should be included in this regulation or the FAR;

(vii) Material expressly determined by the DAR Council to be inappropriate for FAR or DoD FAR Supplement coverage, but appropriate for inclusion in Departmental publications.

(2) Instructions issued in accordance with FAR 1.304(a) shall not contain material which unnecessarily duplicates, is inconsistent with, or increases or restricts the use of, any authority contained in this regulation or the FAR.

(c) Each Department shall establish procedures to screen all instructions (including directives, regulations, policies or procedures), contract forms, and contract clauses issued pursuant to FAR 1.304(a) and (b) above to assure strict compliance with this paragraph, and to determine if the subject matter is appropriate for inclusion in this regulation or the FAR.

201.371 USEUCOM Supplement.

A supplement, entitled USEUCOM Supplement, is applicable to all purchasing offices of the Department of Defense in the North Atlantic-Mediterranean area, including all of Europe. The USEUCOM Supplement and changes thereto are developed by USEUCOM and concurred in by the Joint Acquisition Coordinating Board-Europe representing the purchasing offices in that area and, after adoption and approval by the Defense Acquisition Regulatory Council, are published and distributed by the Headquarters, United States European Command, as an integral part of this Regulation. In addition, Headquarters USEUCOM publishes Tabs to the USEUCOM Supplement which contain source and informational material (such as government-to-government agreements and tax information) and which do not require approval by the DAR Council.

Subpart 201.4—Deviations From the FAR

201.402 Policy.

(a) The FAR and the DoD FAR Supplement are not intended to stifle the development of new techniques or methods of procurement. Innovation to attain desirable objectives will occasionally necessitate deviations from this regulation and the FAR, and it is the responsibility of contracting officers to request such deviations whenever they are required in the best interest of the Government. For the purpose of this paragraph, a deviation shall be considered to be any of the following:

(1) When a contract clause is set forth in the FAR or DoD FAR Supplement for use verbatim, use of a contract clause covering the same subject matter which varies from the FAR or DoD FAR Supplement coverage, or use of a collateral provision which modifies either the clause or its prescribed application constitutes a deviation; however, in the case of a purchase or contract of an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, such contract clauses may (subject to the direction of authority above the level of the contracting officer) be modified if no change in intent, principle, or substance is made (offshore contracting activities shall keep the cognizant unified commander advised of significant deviations effected under this subparagraph (1));

(2) When a contract clause is set forth in the FAR or this regulation but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the FAR or DoD FAR Supplement clause or related coverage of the subject matter;

(3) Omission of any mandatory contract clause;

(4) When a Standard, DD, or other form is prescribed by the FAR or a Department of Defense Directive, use of any other form for the same purpose;

(5) Alteration of a Standard, DD, or other form (other than Departmental

forms), except as authorized by the FAR, this regulation, or a Department of Defense Directive;

(6) When limitations are imposed in FAR, this regulation, or a Department of Defense Directive, upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations,

(7) When a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by the FAR or this regulation, any policy, procedure, method or practice which is inconsistent with that set forth;

(8) Issuance of any instructions described in 201.304 (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method of practice, not covered in the FAR, this regulation or in Department of Defense Directives) unless permitted under 201.304;

(9) A contract saving clause whereby the parties are committed to a contract modification in the event of changes in controlling statutes or regulations during the term of the contract. Any such saving clause shall require approval pursuant to 201.404.

(b) Requests for approval of any deviation from the FAR or this regulation shall be forwarded to the approving authority through procurement channels. Each submission shall contain as a minimum:

(1) Identification of the FAR or DoD FAR Supplement requirement from which deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A copy of any pertinent document, including forms or clauses and the proposed contractor's request, if any;

(5) A statement of the period of time for which the deviation is needed; and

(6) Detailed reasons supporting the request.

201.403 Individual deviations.

(a) Except where elsewhere prohibited, deviations from the FAR or this supplement or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures. A copy shall be furnished to: The Deputy Assistant Secretary of Defense (Procurement), OASD (P&L) Attention: DAR Council, Washington, DC 20301-3062.

(b) Examples of deviations from certain provisions of the FAR or this regulation not permitted under (a) above, although affecting only one contract or procurement, are:

(1) Provisions required by statute or executive order;

(2) FAR subpart 27.4;

(3) FAR subpart 31.1;

(4) FAR subpart 31.2;

(5) FAR part 32 (except subparts 32.7, 32.8, and the Payment clauses in subpart 32.1);

(6) FAR section 3.104.

[51 FR 46069, Dec. 23, 1986, as amended at 53 FR 46457, Nov. 17, 1988; 54 FR 21068, May 16, 1989; 54 FR 26205, June 22, 1989; 55 FR 19074, May 8, 1990]

201.404 Class deviations.

Except as authorized in 201.403, deviations from this supplement or a Department of Defense Directive will not be effected unless approved in advance by the Assistant Secretary of Defense (Acquisition and Logistics) (ASD(A&L)); provided, however that unanimous approval by the members of the DAR Council will constitute approval of the ASD(A&L) of all matters except those involving major policy. Written requests for such approval will be submitted to the ASD(A&L) through the DAR Council as far in advance as exigencies of the situation will permit.

201.405 Deviations pertaining to treaties and executive agreements.

(b) and (c) Notwithstanding 201.403 and 201.404, deviations from the FAR or this supplement that are required in order to comply with a treaty or executive agreement to which the United States is a party are authorized in accordance with FAR 1.405(b) and (c).

(d) A copy of the text of any deviation authorized under FAR 1.405(b) or (c) shall be submitted to the DAR Council.

(e) If a deviation required to comply with a treaty or an executive agreement is not authorized by FAR 1.405 (b) or (c), the request for deviation shall be submitted to the DAR Council for consideration.

Subpart 201.6—Contracting Authority and Responsibilities

201.601 General.

Except as otherwise prescribed by procedures of each respective Department, the Head of a Contracting Activity is responsible for acquisitions under or assigned to that activity.

[51 FR 46069, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

201.603-3 Appointment.

Certificates of Appointment which were issued under the purview of the Armed Services Procurement Regulation and its successor, the Defense Acquisition Regulation, will have the same effect as if they had been issued under the Federal Acquisition Regulation.

Subpart 201.7—Determinations and Findings

201.702 General.

(a) As an example of reasonable variations in estimated quantities, if at the time a D&F is submitted for approval, historical evidence indicates the possibility of increased quantities, e.g., requirements of other Departments, and Military Assistance Program requirements, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if the acquisition process reveals that additional quantities can be acquired under the approved program and within available funds.

201.704 Content.

Additional guidance to that contained in FAR 1.704 for the preparation of a D&F is set forth with the appropriate subject matter. Where a format for a D&F is set forth with the appropriate subject matter, the D&F should conform generally to that format. Typical D&F formats are at 206.202(b) (S-70) (ii), 216.102(d) and 225.7310(c)(2)(i).

[51 FR 46069, Dec. 23, 1986, as amended at 54 FR 53616, Dec. 29, 1989]

201.707 Signatory authority.

The Agency Head may make any of the determinations, and written findings in support thereof, that may be made by the head of any contracting activity signing as a chief officer responsible for contracting or by a contracting officer. Determinations, and findings in support thereof, not required to be made by higher authority may be made by the head of a contracting activity signing as chief officer responsible for contracting.

PART 202—DEFINITIONS OF WORDS AND TERMS

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 202.1—Definitions

202.101 Definitions.

Department of Defense means the Office of the Secretary of Defense and the Military Departments.

Department or *Military Department* includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Mapping Agency, the Defense Nuclear Agency, and the National Security Agency.

Head of the Agency means the Secretary of Defense, the Assistant Secretary of Defense (Production and Logistics), the Secretary, Under Secretary or any Assistant Secretary of the Army, Navy and Air Force, the Commander in Chief, United States Special Operations Command, and the Director and Deputy Director of Defense agencies, except to the extent that any law or executive order limits the exercise of authority to specific individuals at the Secretarial level. In the latter situation, the Assistant Secretary of Defense (Production and Logistics), unless specifically restricted to the Secretary of Defense, shall exercise the authority for Defense agencies.

Senior Procurement Executive means for the:

Department of Defense, Under Secretary of Defense (Acquisition);

Army, The Assistant Secretary of the Army (Research, Development and Acquisition);

Navy, The Assistant Secretary of the Navy (Shipbuilding and Logistics);

Air Force, The Assistant Secretary of the Air Force (Acquisition);

Defense Logistics Agency, the Deputy Director (Acquisition Management);

Defense Communications Agency, The Deputy Director, Acquisition Management, Defense Communications Agency;

Defense Mapping Agency, The Director of Acquisition;

Defense Nuclear Agency, The Director, Acquisition Management; and

National Security Agency, The Deputy Director, National Security Agency.

On-Site Inspection Agency, The Director, On-Site Inspection Agency.

(a) *Contracting Activities* include:

For the Army:

U.S. Army Contract Support Agency;

Office of the Deputy Chief of Staff for Procurement, Headquarters, U.S. Army Materiel Command;

U.S. Army Armament Munitions and Chemical Command;

U.S. Army Laboratory Command;

U.S. Army Missile Command;

U.S. Army Communications-Electronics Command;

U.S. Army Troop Support Agency;

U.S. Army Troop Support Command;

U.S. Army Tank-Automotive Command;

U.S. Army Aviation Systems Command;

U.S. Army Training and Doctrine Command;

U.S. Army Test and Evaluation Command;

U.S. Army Forces Command;

U.S. Army Health Services Command;

Military District of Washington, U.S. Army;

U.S. Army, Europe;

National Guard Bureau;

U.S. Army Corps of Engineers;

U.S. Army Information Systems Command;

U.S. Army Medical Research and Development Command;

U.S. Army Western Command;

Military Traffic Management Command;

U.S. Army Strategic Defense Command;

Eighth U.S. Army;

U.S. Army Depot Systems Command;

U.S. Army Intelligence and Security Command; and

U.S. Army, South.

For the Navy:

Office of Acquisition and Contract Policy, Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics;

Director, Contracts and Business Management;

Naval Air Systems Command;

Naval Data Automation Command;

Naval Electronic Systems Command;

Naval Facilities Engineering Command;

Naval Sea Systems Command;

Naval Supply Systems Command;

Office of Naval Research;

Navy Aviation Supply Office;

Military Sealift Command;

Strategic Systems Project Office;

Ships Parts Control Center;

Headquarters, United States Marine Corps; and

Installations and Logistics Department, Headquarters, U.S. Marine Corps.

For the Air Force:

HQ USAF, Director of Contracting and Manufacturing Policy;

Air Force Logistics Command;

Air Force Systems Command;

Strategic Air Command;

Tactical Air Command;

Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe;
Alaskan Air Command;
Space Command; and
Electronic Security Command.

For the Defense Logistics Agency:
Office of the Executive Director, Contract Management;
Office of the Executive Director, Contracting;
Defense Supply Centers; and
Defense Personnel Support Center.

For the Defense Communications Agency:
Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.

For Defense Mapping Agency:
Headquarters, Defense Mapping Agency, Logistics Office.

For the Defense Nuclear Agency:
Headquarters, Defense Nuclear Agency.

For the National Security Agency:
Headquarters, National Security Agency.

For the Defense Supply Service—Washington:
Director, Defense Supply Service—Washington.

For the Strategic Defense Initiative Organization:
Director, Strategic Defense Initiative Organization.

For the On-Site Inspection Agency:
Director, On-Site Inpection Agency

(b) *Contracting activity* also includes any other contracting activity hereafter established. The number and designation of particular contracting activities of any Military Department may be changed by directive of the Secretary.

[51 FR 46073, Dec. 23, 1986, as amended at 52 FR 34784, Sept. 15, 1987; 53 FR 38174, 38179, 38193, 38246, Sept. 29, 1988; 54 FR 11724, Mar. 22, 1989; 54 FR 53616, Dec. 29, 1989; 55 FR 19074, May 8, 1990]

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

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203.000 Scope of part.

Subpart 203.1—Safeguards

203.101 Standards of conduct.
203.101-3 Agency regulations.
203.103 Independent pricing.
203.103-2 Evaluating the certification.
203.104 Procurement integrity.
203.104-1 General.
203.104-4 Definitions.
203.104-5 Disclosure of proprietary and source selection information.
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203.170 Statutory compensation prohibitions and reporting requirements relating to certain former Department of Defense (DoD) employees.
203.170-1 Definitions.
203.170-2 Policy.
203.170-3 Reporting requirements.
203.170-4 Penalties.
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Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.
203.204 Treatment of violations.

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Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.
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203.570 Implied endorsement by military resale activities.
203.571 Employment prohibitions on persons convicted of fraud or other Defense contract-related felonies.
203.571-1 Scope.
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203.571-6 Waiver.

Sec.

Subpart 203.70—Contractor Responsibility To Avoid Improper Business Practices

203.7000 Policy.
203.7001 Display of DoD Hotline Poster.
203.7002 Contract Clause.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46074, Dec. 23, 1986, unless otherwise noted.

203.000 Scope of part.

Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in 209.472 and Departmental procedures. Such reports are specified by 203.103-2, 203.203, 203.301, 203.409, and 203.502 of this part.

Subpart 203.1—Safeguards

203.101 Standards of conduct.

203.101-3 Agency regulations.

The applicable Department of Defense directive on Standards of Conduct is DODD 5500.7. See AR 600-50 for the Army; SECNAV Instr. 5370.2G of 4 August 1977, for the Navy; AFR 30-30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220-50-1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

203.103 Independent pricing.

203.103-2 Evaluating the certification.

(b) (3) Whenever an offer is rejected under FAR 3.103-2(b) (1) or (2), or the certificate is suspected of being false, the matter shall be reported in accordance with 203.000 as well as being reported to the Attorney General in accordance with FAR 3.303.

203.104 Procurement integrity.

[54 FR 21068, May 16, 1989]

203.104-1 General.

For DoD, as provided in subsection 25(d) of the OFPP Act (41 U.S.C. 421), all agency regulations that supplement or implement FAR 3.104 or this section, beyond internal agency operating procedures, must be approved by the Under Secretary of Defense for Acquisition or his or her designee within that office. Both individual and class deviations must be referred to the DAR Council.

[54 FR 21068, May 16, 1989]

203.104-4 Definitions.

(f) For DoD, the agency regulation is DoD Directive 5500.7, Standards of Conduct.

[54 FR 21068, May 16, 1989]

203.104-5 Disclosure of proprietary and source selection information.

(e)(4) For purposes of FAR 3.104-5(e)(4) only, DoD agencies shall follow the notification procedures in FAR 27.404(h). However, the first sentence in FAR 27.404(h) does not apply to DoD.

[54 FR 21068, May 16, 1989]

203.104-9 Certification requirements.

(b)(2)(viii) For Basic Ordering Agreements, prior to issuance of each BOA order expected to exceed $100,000. For BOA orders, identification of the beginning of the conduct of a procurement (see FAR 3.104-7) applies only to the instant order.

[54 FR 21068, May 16, 1989]

203.170 Statutory compensation prohibitions and reporting requirements relating to certain former Department of Defense (DoD) employees.

[52 FR 12385, Apr. 16, 1987 and 53 FR 38236, Sept. 29, 1988]

203.170-1 Definitions.

Armed Forces, as used in this section, means the uniformed military services but excluding the U.S. Coast Guard.

Compensation, as used in this section, means any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment gift, benefit, reward, favor, or gratuity, and which has a fair market value in excess of $250. Compensation shall be deemed indirectly received if it is paid to an entity other than the individual, specifically in exchange for services performed by the individual.

Defense contractor, as used in this section, means an entity that contracts directly with the DoD to supply the DoD with goods or services (including affiliates and subsidiaries which clearly engage in the performance of defense contracts). "Defense contractor" does not include a state or local government.

Defense Agency Ethics Official (DAEO), as used in this section, means a DoD officer or employee who has been appointed to administer the provisions of the Ethics in Government Act, as amended.

Former DoD Employee, as used in this section, means a person who served in the DoD in a civilian position for which the rate of pay was equal to or greater than the minimum rate of pay for Grade GS-13 of the General Schedule, or served in the Armed Forces in a pay grade of 04 or higher.

Former DoD official, as used in this section, means the following:

(a) Individuals who served in a civilian position for which the rate of pay was equal to or greater than the minimum rate of pay for Grade GS-13 of the General Schedule, or who served in the Armed Forces in a pay grade of 0-4 or higher, who:

(1) Spent the majority of working days during the last two years of DoD service performing a procurement function relating to a DoD contract, at a site or plant that was owned or operated by a contractor, and which was the principal location of such person's performance of that procurement function; or

(2) Performed, on a majority of the person's working days during the last two years of DoD service, a procurement function relating to a major defense system and, in the performance of such function, participated on any occasion personally and substantially in a manner involving decision-making responsibilities with respect to a contract for that system through contact with the contractor;

(b) An individual who served in a civilian position for which the rate of pay is equal to or greater than the minimum rate of pay for a Senior Executive Service position or other executive position at the same or higher level, and an individual who served in the Armed Forces in the pay grade of 07 or higher, if such individuals during the last two years of DoD service:

(1) Acted as one of the primary representatives of the United States in the negotiation with a defense contractor of a defense contract in an amount in excess of $10,000,000 (the actual contractual action in which the individual was involved must have been in an amount in excess of $10,000,000), or

(2) Acted as one of the primary representatives of the United States in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10,000,000. An unresolved claim shall be, for the purposes of this section, valued by the greater of the amount of the claim or the amount of the settlement.

Major defense contractor, as used in this section, means any business entity which, during the Government fiscal year preceding the Government fiscal year in which compensation was first provided to a former DoD employee, was awarded defense contracts in a total amount equal to or greater than $10,000,000.

Major defense system, as used in this section, means a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major defense system if: (a) The DoD is responsible for the system and the total expenditures for research, development, test and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars); or the eventual total expenditure for procurement is estimated to exceed $300 million (based on fiscal year 1980 constant dollars) or, (b) the system is designated a major system by the head of the agency responsible for the system.

Negotiation, as used in this section, means exchange of views between representatives of the Government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

Primary Government representative, as used in this section, means if more than one Government representative is involved in any particular transaction, the official or officials supervising the Government's effort in the matter. To act as a "representative" requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

Procurement related function (or procurement function), as used in this section, means any function relating to:

(a) The negotiation, award, administration or approval of a contract;

(b) The selection of a contractor;

(c) The approval of a change in a contract;

(d) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or

(e) The management of a procurement program.

[52 FR 12385, Apr. 16, 1987 and 53 FR 38236, Sept. 29, 1988]

203.170-2 Policy.

(a) 10 U.S.C. 2397b prohibits former DoD officials who left DoD service on or after 16 April 1987 and who performed procurement-related functions in connection with a major defense contractor from accepting compensation from that same contractor for a period of two years after such officials have left service with DoD. Related implementation of the statute for the DoD may be found in DoD Directive 5500.7, Standards of Conduct.

(b) 10 U.S.C. 2397c requires that each contract entered into by DoD for the procurement of goods or services in excess of $100,000 contain a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by that person would violate section 2397b(a).

[53 FR 38237, Sept. 29, 1988]

203.170-3 Reporting requirements.

Major defense contractors are required to report, as delineated in paragraph (c) of the clause at 252.203-7002, on employment of certain former DoD employees. The reports are to be submitted to the Office of the Assistant General Counsel (Legal Counsel), Standards of Conduct Office, Attn: OAGC/LC, Pentagon, Washington, DC 20301-1600 not later than 1 April of the year following the calendar year period covered by the report.

[52 FR 12385, Apr. 16, 1987 and 53 FR 38236, 38237, Sept. 29, 1988]

203.170-4 Penalties.

(a) Major defense contractors are subject to the following penalties for knowing failures to comply with the statute or with the contractual prohibition or the reporting requirement specified in the statute:

(1) Civil fines up to $500,000 for knowingly offering or providing compensation to another person with knowledge that acceptance of that compensation is or would be in violation of the statute.

(2) Liquidated damages in the amount of either $100,000, or three times the amount of compensation paid by the contractor to the former DoD official, whichever is greater, for failure to comply with the contract prohibition.

(3) An administrative penalty not to exceed $10,000 for failure to report as required by the statute and as implemented in paragraph (c) of the clause at 252.203-7002.

(b) Liquidated damages will be assessed in accordance with agency procedures in coordination with the appropriate DAEO.

[52 FR 12386, Apr. 16, 1987 and 53 FR 38236, 38237, Sept. 29, 1988]

203.170-5 Contract clause.

Contracting officers shall include the clause at 252.203-7002, Statutory Compensation Prohibitions and Reporting Requirements Relating to Certain Former DoD Employees, in all contracts expected to exceed $100,000.

[52 FR 12386, Apr. 16, 1987 and 53 FR 38236, Sept. 29, 1988]

Subpart 203.2—Contractor Gratuities to Government Personnel

203.203 Reporting suspected violations of the Gratuities clause.

Suspected violations of the Gratuities clause shall be reported in accordance with 203.000 and Departmental procedures.

203.204 Treatment of violations.

Procedural requirements for hearings under the Gratuities clause are set out in Appendix D.

Subpart 203.3—Reports of Suspected Antitrust Violations

203.301 General.

(b) Suspected antitrust violations shall be reported in accordance with 203.000 and Departmental procedures.

Subpart 203.4—Contingent Fees

203.409 Misrepresentations or violations of the convenant against contingent fees.

(b) When the chief of the contracting office has reviewed the facts and found evidence or basis for suspicion of fraud or other criminal conduct, the matter shall be reported in accordance with 203.000 and Departmental procedures.

Subpart 203.5—Other Improper Business Practices

203.502 Subcontractor kickbacks.

Suspected violations of the Anti-Kickback Act shall be reported in accordance with 203.000 and Departmental procedures.

203.502-2 General.

(h) The DoD Inspector General has designated Special Agents of the following investigative organizations as representatives for conducting inspections and audits under the Anti-Kickback Act of 1986:

(1) U.S. Army Criminal Investigation Command.

(2) Naval Investigative Service.

(3) Air Force Office of Special Investigations.

(4) Defense Criminal Investigative Service.

[54 FR 30740, July 24, 1989]

203.570 Implied endorsement by military resale activities.

The contracting officer shall include the clause at 252.203-7000 in all solicitations and contracts for supplies purchased for resale to preclude any implied endorsement by military resale activities of commercially advertised products.

203.571 Employment prohibitions on persons convicted of fraud or other Defense contract-related felonies.

203.571-1 Scope.

This subpart prescribes policies and procedures to implement 10 U.S.C. 2408 which prohibits defense contractors from employing in a managerial or supervisory capacity on any defense contract, persons convicted of fraud or any other felony arising out of a contract with the Department of Defense, or allowing those persons to serve on the contractor's board of directors, as a consultant, or as an agent or representative. The nature and length of the statutory prohibition depend upon the date of conviction. The statutory prohibitions extend for a period, as determined by the Secretary of Defense, of not less than one year from the date of conviction.

[52 FR 34784, Sept. 15, 1987, as amended at 54 FR 16114, Apr. 21, 1989]

203.571-2 Definitions.

Arising out of a contract with the Department of Defense, as used in this subpart, means any act in connection with (a) attempting to obtain, or (b) obtaining, (c) performing, a contract or subcontract of any agency, department, or component of the Department of Defense.

Conviction of fraud or any other felony, as used in this subpart, means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

[52 FR 34784, Sept. 15, 1987]

203.571-3 Policy.

(a) It is DoD policy that a contractor shall not knowingly allow a person, convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, to serve (1) in a management or supervisory capacity on any defense contract or subcontract, or (2) upon its board of directors, or (3) as a consultant, or (4) as an agent or representative, for a period of five years from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer, unless waived in accordance with agency procedures in the interests of national security.

(b) Contractors shall not allow a person, convicted on or before September 29, 1988, of fraud or any other felony arising out of a contract with the Department of Defense, to serve in a management or supervisory capacity on any defense contract or subcontract or upon its board of directors, for a period of one year from the date of conviction or for the period of any resultant debarment of the convicted person, whichever is longer.

[54 FR 16114, Apr. 21, 1989]

203.571-4 Reporting.

When a defense contractor is found to have violated the prohibition in 203.571-3 above, a report shall be prepared and forwarded in accordance with agency procedures (see DoD Directive 7050.5).

[52 FR 34785, Sept. 15, 1987]

203.571-5 Contract clause.

The contracting officer shall insert the clause at 252.203-7001, Special Prohibition on Employment, in all solicitation and contracts other than those entered into using the small purchase procedures of FAR part 13.

[52 FR 34785, Sept. 15, 1987]

203.571-6 Waiver.

(a) Requests for waiver submitted under DFARS 252.203-7001(e) shall be reviewed by the contracting officer. If the contracting officer decides the requested waiver is not required in the interests of national security, the contracting officer shall deny the request and advise the contractor accordingly. If the contracting officer decides the requested waiver may be in the interests of national security, the contracting officer shall forward the request to the Head of the Agency or designee.

(b) The Head of the Agency or its designee shall report all waivers granted and the reasons therefor to the Under Secretary of Defense for Acquisition who shall forward the report to Congress as required by 10 U.S.C. 2408(a)(3).

[54 FR 16115, Apr. 21, 1989]

Subpart 203.70—Contract or Responsibility To Avoid Improper Business Practices

SOURCE: 52 FR 34386, Sept. 11, 1987, unless otherwise noted.

203.7000 Policy.

It is essential that companies with whom the Government contracts conduct themselves only with the highest degree of integrity and honesty. Therefore, contractors should have standards of conduct and internal control systems, suitable to the size of the company and the extent of their involvement in Government contracting, that are designed to promote such standards, to facilitiate the timely discovery and disclosure of improper conduct in connection with Government contracts, and assure that corrective measures are promptly instituted and carried out. For example, a contractor's system of management controls should provide for—

(a) A written code of business ethics and conduct and an ethics training program for all employees;

(b) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(c) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports (but see 203.7001 below);

(d) Internal and/or external audits as appropriate;

(e) Disciplinary action for improper conduct;

(f) Timely reporting to appropriate Government officials of any suspected or possible violation of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(g) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

203.7001 Display of DoD Hotline poster.

Contractors who are awarded a DoD contract of $5 million or more which will not be performed in a foreign country and who have not established an internal reporting mechanism and program, as described in 203.7000(c) above, shall be required to display prominently in common work areas within business segments performing work under DoD contracts, DoD Hotline posters prepared by the Office of the Inspector General, DoD.

[52 FR 34386, Sept. 11, 1987, as amended at 53 FR 38242, Sept. 29, 1988]

203.7002 Contract clause.

The contracting officer shall insert the clause at 252.203-7003, Display of DoD Hotline Poster, in solicitations and contracts expected to exceed $5 million, except when performance will take place in a foreign country.

[52 FR 34386, Sept. 11, 1987, as amended at 53 FR 38242, Sept. 29, 1988]

PART 204—ADMINISTRATIVE MATTERS

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204.170 Contracting Officer or Point of Contact Telephone Number.

Subpart 204.2—Contract Distribution

204.201 Procedures.
204.202 DoD distribution requirements.
204.203 Taxpayer Identification Number (TIN) information.

Subpart 204.4—[Reserved]

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204.500 Scope of subpart.
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204.671 Individual contracting action report (DD Form 350).
204.671-1 Scope.
204.671-2 Purpose.
204.671-3 Applicability and coverage.
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204.671-5 Instructions for completion of DD Form 350.
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204.672 Monthly contracting summary of actions $25,000 or less (DD Form 1057).
204.672-1 Scope.
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204.672-3 Due date and distribution.
204.672-4 Definitions.
204.672-5 Instructions for completion of the DD Form 1057.
204.672-6 Instructions for preparing magnetic tape of DD Form 1057 actions, DD-P&L(M)1015.
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204.674 Overseas distribution of defense subcontracts (DD Form 2139).
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204.675 Individual Contract Reporting of Actions $25,000 or Less in the Four Designated Industry Groups Under the Small Business Competitiveness Demonstration Program.
204.675-1 General.
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204.802-71 Filing of documents.
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204.903 Procedures.

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

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Subpart 204.71—Uniform Contract Line Item Numbering System

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204.7108-2 Criteria for establishing.
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204.7109 Indefinite delivery type contracts.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46074, Dec. 23, 1986, unless otherwise noted.

Subpart 204.1—Contract Execution

204.170 Contracting Officer or Point of Contact Telephone Number.

The name and telephone number of the contracting officer or point of contact at the office awarding the contract shall be identified in the contract. The name and telephone number of the contracting officer or point of contact at the office which issues a modification shall be identified in the modification.

Subpart 204.2—Contract Distribution

204.201 Procedures.

(e) One copy of each of the following type contracts and of each modification thereto shall be distributed to the appropriate Defense Contract Audit Agency (DCAA) field audit office (listed in the DCAA Directory—Headquarters and Field Offices):

(1) Cost reimbursement

(2) Time-and-materials

(3) Labor-hour

(4) Fixed price contracts with provisions for redetermination, incentives,

economic price adjustment, or cost allowability

(5) Any other contract which requires audit service. (If there is a question as to the appropriate DCAA field audit office, contracting officers may request the assistance of the DCAA procurement liaison auditor or the nearest DCAA field audit office.)

(f) Two copies shall be distributed directly to the contract administration office cognizant of each manufacturing location where contract administration services will be required (see DoD Directory of Contract Administration Services Components 4105.59H), when administration of the contract is performed at other than the place of manufacture.

204.202 DoD distribution requirements.

(a) The contracting officer executing a contract or modification is responsible for complete distribution of the document.

(b) Except as provided in this paragraph and FAR 4.201(a), the procuring contracting officer shall maintain the original executed procurement document in the official contract file. The original of each modification executed by the ACO or TCO shall be provided to the PCO. Unless otherwise directed by the Department concerned, the original executed copies of orders under Basic Ordering Agreements and the original executed provisioning orders shall be maintained by the office issuing the orders.

(c) In addition to the distribution in FAR 4.201, copies of contracts (including agreements) shall be distributed as specified below:

(1) Four copies to the contract administration office (distribution shall be effected simultaneously with the copy furnished under FAR 4.201(b));

(2) One copy to each consignee indicated in the contract (A transshipping terminal is not a consignee. The Defense Logistics Agency is authorized to prescribe alternate procedures for distribution of procurement documents to consignees in Defense Subsistence Region, Europe,);

(3) One copy to the appropriate transportation office when required by FAR 42.1402, and additional copies as required by Departmental regulations;

(4) Ten copies to the MIPR initiating activity in the case of coordinated procurement;

(5) One copy to the CAO ADP point, except when the DoDAAD code (see DoD Directory 4105.59H) is the same as that of either the CAO or payment office.

(d) When a payment office is added to, or changed under, an existing contract by modification, a copy of the basic contract and all modifications thereto shall be furnished to the added/new payment office. A copy of the modification affecting such addition or change shall also be furnished to the original or losing payment office. When a contract administration office, an accounting office and finance office (funding office), a consignee or other activity is added by a modification, the contracting officer shall determine the extent to which each activity is concerned with the basic contract and modifications and make distribution accordingly.

(e) Distribution of modifications issued pursuant to 204.7004-3(a)(2)(B) and 204.7004-4(b)(2) may be limited to the following:

(1) Contractor;

(2) Receiving Activity;

(3) Contract Administration Office;

(4) Payment Office;

(5) CAO ADP point in accordance with (c)(5) above.

(f) Distribution of overhead rate agreements may be limited to the contractor and the executing contracting officer.

(g) Distribution of contract modifications generated by mechanical means (computer program) may be limited to the following:

(1) Contractor, one copy;

(2) CAO, one copy;

(3) New Payment Office, one copy;

(4) PCO, one copy;

(5) Funding Activities, one copy to each.

[49 FR 11321, Mar. 26, 1984, as amended at 52 FR 36775, Oct. 1, 1987; 53 FR 32620, Aug. 26, 1988; 53 FR 38237, Sept. 29, 1988; 54 FR 7427, Feb. 21, 1989; 54 FR 53616, Dec. 29, 1989]

204.203 Taxpayer Identification Number (TIN) Information.

For DoD, if the TIN or corporate status are derived from a source other than the provision at FAR 52.204-3, the last page of the copy of the contract forwarded to the paying office will be annotated to state the contractor's TIN and corporate status.

[54 FR 20591, May 12, 1989]

Subpart 204.4—[Reserved]

Subpart 204.5—Security of Contractor Telecommunications

Source: 53 FR 51559, Dec. 22, 1988, unless otherwise noted.

204.500 Scope of subpart.

This subpart prescribes requirements for securing telecommunications between Department of Defense agencies and their contractors and subcontractors.

204.501 Definitions.

Securing, as used in this subpart, means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

Sensitive information, as used in this subpart, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which the individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

Telecommunications systems, as used in this subpart, means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Defense agencies, contractors and subcontractors, to transmit

(a) Classified or sensitive information;

(b) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(c) Matters critical to the direct fulfillment of military or intelligence missions.

204.502 Policy.

(a) National policy provides the basis for agency regulations concerning the security of Government contractor telecommunications systems.

(b) Technical or requirements organizations initiating purchase requests shall identify to the Contracting Officer:

(1) The nature and extent of information requiring security during telecommunications and the requirement for the contractor to secure telecommunications systems for each contract;

(2) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques or services must be interoperable; and

(3) The approved telecommunications security equipment, devices, techniques or services such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(c) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts. Except as provided in paragraph (d) of this section, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with Part 45 of the FAR. In some cases, such as for communications security (COMSEC) equipment designated as a Controlled Cryptographic Item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(d) The agency head or designee may agree to provide the necessary facilities as Government-Furnished Property or authorize their acquisition as Contractor-Acquired Property if: (1) The Contractor or subcontractor is ineligible to own COMSEC equipment; or (2) the conditions of FAR 45.302-1(a) are met.

204.503 Contract clause.

The contracting officer shall insert the clause at 252.204-7008, Telecommunications Security Equipment, Devices, Techniques and Services, in solicitations and contracts when securing telecommunications is required in performance of a contract.

Subpart 204.6—Contract Reporting

SOURCE: 53 FR 34091, Sept. 2, 1988, unless otherwise noted.

204.600 Scope.

This subpart prescribes reporting requirements for two DoD reports contained in the Federal Procurement Data System (FPDS). The two reports, the Individual Contracting Action Report (DD Form 350) (see 204.671 and 204.675), and the Monthly Summary of Actions $25,000 or Less (DD Form 1057) (see 204.672), collectively are designated the Defense Contract Action Data System (DCADS). In addition, this subpart prescribes other DoD contract reports.

[55 FR 19074, May 8, 1990]

204.601 Record requirements.

(a) The DCADS meets the record retention requirements of FAR 4.601.

(d) The information required to be transmitted to the Federal Procurement Data System shall be transmitted by Washington Headquarters Services.

[53 FR 34091, Sept. 2, 1988, as amended at 55 FR 19074, May 8, 1990]

204.602 Federal Procurement Data System.

(c) The DD Form 350, Individual Contracting Action Report, is the DoD counterpart to the SF 279, FPDS Individual Contract Action Report. The DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less, is the DoD counterpart to the SF 281, FPDS Summary Contract Action Report ($25,000 or Less).

(d) Procedures for obtaining a Contractor Establishment Code are at 204.671-5(b) Item B5A.

[55 FR 19074, May 8, 1990]

204.603 Solicitation provisions.

204.603-70 Commercial and Government Entity (CAGE) Codes.

The contracting officer shall insert the provision at 252.204-7007, Commercial and Government Entity (CAGE) Code Reporting, when there is a reasonable expectation that an award may be made to an offeror whose CAGE Code is not available to the contracting office but will be available to the offeror(s).

[55 FR 19074, May 8, 1990]

204.670 DoD Contract Reporting Systems.

204.670-1 Definitions.

As used in 204.671 and 204.672, the following terms have the meanings stated below:

Commercial and Government Entity (CAGE) Code means a code assigned or maintained by the Defense Logistics Service Center (DLSC) to identify commercial and government activities. CAGE Codes have also been known in the past as Federal Supply Codes for Manufacturers (FSCM) and Federal Supply Codes for Nonmanufacturers (FSCNM).

Contract Administration Office means the office which awards or executes a contracting action as defined below, when such action is accomplished by an ACO on behalf of the Contracting Officer who assigned contract administration responsibility to that office. This includes actions taken by a TCO relating to the settlement of terminated contracts.

Contracting Action means any written action obligating or deobligating funds in connection with the purchasing, renting, leasing, or otherwise obtaining supplies, services, or construction. The term includes: preliminary contractual instruments; letter contracts; definitive contracts, including notices of award; purchase orders; BPA calls; job orders; task orders; delivery orders; contigency orders; administrative notices; communication services authorizations (CSA's); production lists; priced exhibits; other orders under existing contracts; and contract modifications such as change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

Contracting Office means any office which awards or executes a contracting action when that action is accomplished by the Contracting Officer. Included in the term are activities which place orders against DoD contracts, against another agency's contract, or against Federal Supply Schedules, when such action is not taken in conjunction with an assigned contract administration responsibility.

Emerging Small Business, as used in this part, is as defined in FAR 19.1002."

Nonprofit Institution means any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and state, local, and other non-Federal Government agencies.

United States and Outlying Areas is defined by Federal Information Processing Standard Publication (FIPS PUB) 55-2, *Guideline: Codes for Named Populated Places Primary County Divisions, and Other Locational Entities of the United States and Outlying Areas.* Included are American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of Palau, Puerto Rico, the U.S. Minor Outlying Islands and the Virgin Islands of the U.S.

[53 FR 34091, Sept. 2, 1988, as amended at 53 FR 38242, Sept. 29, 1988; 53 FR 50413, Dec. 15, 1988; 54 FR 4246, Jan. 27, 1989; 54 FR 26205, June 22, 1989. Redesignated and amended at 55 FR 19074, May 8, 1990]

204.670-2 Numbering of subsections.

The numbering in subsections 204.671-5 and 204.672-5 differs from the standard DFARS numbering system. These subsections provide instructions for completing the parts of the DD Form 350 and the sections of the DD Form 1057 and are numbered to correspond to the structure of the forms. These subdivisions are further segmented by reference to the report item or line number. Where appropriate, there is further segmentation by code descriptors. This provides for ease in identifying coverage for a specific item and entry code. For example, 204.672-5(b) Item B13 Code 1 readily identifies the citation as belonging to Code 1 of Item B13 of Part B of the DD Form 350.

[53 FR 34091, Sept. 2, 1988; 53 FR 50413, Dec. 15, 1988. Redesignated and amended at 55 FR 19074, May 8, 1990]

204.671 Individual contracting action report (DD Form 350).

204.671-1 Scope.

This section prescribes the reporting of individual contracting actions in excess of $25,000 on DD Form 350 .

[53 FR 34091, Sept. 2, 1988, as amended at 55 FR 19075, May 8, 1990]

204.671-2 Purpose.

, The DD Form 350, including automated facsimiles and electronic equivalents, is used to report individual contract actions and consolidated actions as set forth in 204.671-3.

[55 FR 19075, May 8, 1990]

204.671-3 Applicability and coverage.

(a) *Structure.* DD Form 350 consists of 6 parts. Part A identifies the report and the reporting activity. Part B identifies the transaction: contract number, contractor, dollars, product, etc. Part C gathers data concerning contracting procedures, labor statute requirements, and contracting methodology. Part D gathers data relating to the various socioeconomic programs which apply to DoD acquisitions. Part E is set aside for departmental or higher authority use. Part F identifies the cognizant reporting official.

(b) *Responsibilities.* (1) Contracting offices shall prepare a DD Form 350 for all contracting actions which obligate or deobligate more than $25,000, including actions accomplished by a contract administration office on behalf of a contracing office, except for the following:

(i) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange Service. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(ii) Transactions for purchase of land, or rental or lease of real property where the contracting action was executed by GSA.

(iii) Orders from GSA Stock and the GSA Consolidated Purchase Program.

(iv) Transactions which involve Government bills of lading or transportation requests.

(v) Grants for basic research with educational institutions and other nonprofit organizations.

(vi) Orders placed by ordering activities against indefinite delivery contracts entered into by the Military Sealift Command or orders against indefinite delivery contracts for petroleum and petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. The estimated value of the orders to be placed in each fiscal year against each Military Sealift Command contract shall be reported by the Military Sealift Command on a separate DD Form 350 in the appropriate fiscal year. The total estimated value of the orders to be placed against each Defense Fuel Supply Center contract and each Defense General Supply Center contract for petroleum and petroleum products, shall be reported by the contracting activity at the time of contract award.

(2) Contract administration offices accomplishing actions subject to DD Form 350 reporting shall transmit to the contracting office on whose behalf the actions were taken, a copy of the contractual instrument clearly annotated in the heading in large block letters "DD FORM 350 REPORTING COPY" within one working day after the action date.

(c) *Type of report.* The contracting office shall prepare DD 350 Forms as described below:

(1) A single DD 350 shall be prepared for each covered action except as described in paragraphs (c)(2) and (c)(3) of this subsection.

(2) Consolidated reports shall be prepared for:

(i) Awards to individuals in support of dependent schools, e.g., principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350.

(ii) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract.

(iii) Orders placed by the Services for resale items in excess of $25,000 against brand name contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10-500. Orders under each such contract shall be consolidated monthly by the Services and cumulative dollar amounts reported on a single DD Form 350 in accordance with departmental regulations. DLA activities shall submit individual rather than consolidated reports.

(iv) Vouchers processed by the U.S. Army Contracting Agency, Europe (USACAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 in accordance with departmental regulations.

(3) Multiple reports are required for a single action under certain circumstances. Any reportable portion with a dollar value of $25,000 or less shall be reported on the DD Form 1057. These procedures will permit accurate reporting of set-asides and other actions which would either not be reported or reported with an incorrect dollar value if reported as a single action. Multiple reports are required when:

(i) Both the Foreign Military Sales Program and other programs are involved (see 204.671-5(b) Item B9);

(ii) More than one type of contract is involved and any nonpredominant portion exceeds $500,000 (see 204.671-5(c) Item C5(ii)).

(d) *Classification.* DD Forms 350 shall be submitted as unclassified documents. Should modification of coding of items on DD Form 350 be deemed necessary for security, the appropriate departmental data collection points identified in 204.671-4(b) shall be contacted for special instructions.

(e) *File copies.* The contract file shall contain the hardcopy DD Form 350, an automated facsimile or an electronic equivalent as directed by the headquarters of the department.

[55 FR 19075, May 8, 1990]

204.671-4 Due date and distribution.

(a) Except as provided in paragraphs (a)(1), (a)(2), or (a)(3) of this subsection, the contracting office shall submit the signed original of each DD Form 350, automated facsimile or electronic equivalent, within 3 working days after the date on which the dollars were actually obligated or deobligated by the contracting office.

(1) For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the DD Form 350 shall be submitted within 10 working days.

(2) For actions executed in the month of September only, prescribed due dates may be extended 10 calendar days for the forwarding of reports in order to assure complete coverage of all contracting actions occuring in the fiscal year at the option of the Departmental Data Collection Point.

(3) For actions accomplished by a contract administration office, the contracting office shall prepare and submit the DD Form 350 within 3 working days after the receipt of the contractual instrument annotated " DD FORM 350 REPORTING COPY" (see 204.671-3).

(b) Distribution of DD Form 350 shall be to the Departmental Data Collection Points as follows:

(1) Army contracting offices (including Corps of Engineers Civil Works) to: US Army Contracting Support Agency, Attn: Contract Support Office (SFRD-KS), Room 1C642, the Pentagon, Washington, DC 20310-0103.

(2) Navy contracting offices as directed by NAVSUP-024.

(3) Air Force contracting offices as directed by SAF/AQCX.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) For all other contracting offices of the Department of Defense, forward the signed originals to the address shown in (b)(1) above.

(c) Corrected reports shall be distributed in the same manner as original reports.

[53 FR 34091, Sept. 2, 1988; 53 FR 50413, Dec. 15, 1988, as amended at 55 FR 19075, May 8, 1990]

204.671-5 Instructions for completion of DD Form 350.

(a) Part A of DD Form 350, *Item A1, Type of Report.*

Code 0—Original Report. Enter this code if this is an original report (including termination actions) and complete sections A through F as appropriate.

Code 1—Cancelling Report. Enter this code if it is necessary to cancel a previously submitted report in its entirety (i.e., the report should not have been submitted), or if there was an error in Item A2, A3 or B1 of the original report. To cancel a report, complete only Items A1, A2, A3, and B1. Code 1 shall not be used for termination or cancellation actions (Item B13 is coded E, F or G).

Code 2—Correcting Report. Enter this code if it is necessary to correct a previously submitted report for any error other than in Items A2, A3 and B1. Enter the same codes in Items A2, A3, and B1 that were entered on the incorrect report and correct the codes in only those items being corrected. Leave all remaining items blank. If it is necessary to change Item A2, A3, or B1 regarding a previously submitted report, that report must be cancelled and a new "original" report submitted with the correct data.

Item A2, Report Number.

(i) Each contracting office shall assign to DD Forms 350 a unique 4-position number with alpha or numeric characters. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

(ii) If Item A1 is coded 1 or 2 (a canceling or correcting action), then enter the report number assigned to the report being canceled or corrected.

Item A3, Contracting Office Code. Enter in Item A3 the code assigned to the contracting office in accordance with DoD Procurement Coding Manual, Volume III, DoD 4105.61M.

Item A4, Name of Contracting Office. Enter, in the space provided, sufficient detail to establish the identity of the contracting office submitting the report.

(b) Part B of DD Form 350.

Item B1, Contract Number. Enter, left justified, either the Department of Defense contract number or, for orders under contracts awarded by other Federal agencies, the contract number of that Federal agency.

(i) For DoD contracts, enter the basic (13 alphanumeric character) procurement instrument identification number (PIIN) that was assigned in accordance with 204.70. Contracts numbered under exceptions permitted by 204.7001 shall include the identification of the contracting office and the fiscal year in accordance with 204.7003-1 (a) and (b) and appendix N, plus 5 characters. Do not enter other supplementary procurement instrument numbers as part of the contract number; such numbers shall be entered in Item B2. Also, do not enter dashes, slants, or similar punctuation marks, and do not show spaces between numbers or letters in the PIIN.

(ii) For other agency contracts, enter the contract number of the federal agency as it appears in the contractual instrument, except that spaces between characters shall not be shown, and dashes, slants, and other punctuation marks shall not be entered (e.g., for GS-00S-27773, enter GS00S27773; for GP-16251 A, enter GP16251A, etc.).

Item B2, Modification. Order or Other Supplementary Procurement Instrument Identification Number. If applicable, enter the supplemental procurement identification number (up to 19 characters) that was assigned in accordance with 204.7004 or other identification permitted by 204.7001. Usually calls and orders will be assigned a four position number in accordance with 204.7004-4. Usually a modification, including a modification of a call or order, will be assigned a six position modification number in accordance with 204.7004-3 or 204.7004-4(b) respectively.

Item B3, Action Date. Enter the year, month and day when a mutually binding agreement was reached. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1999 as 990102. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the funds availability.

Item B4, Contract Completion Date. Enter the year, month and day of the last contract delivery date or the end of the performance period as set forth in the contract. Enter each segment as a 2-digit number. Use 01 through 12 for January through December. For example, enter 2 January 1999 as 990102.

Item B5, Contractor Identification Information. The Contractor name and codes requested in the items B5A through B5E refer to the contractor whose name and address appears in the contract document. For contracts placed with the Small Business Administration pursuant to the Small Business Act, Public Law 85-536, section 8(a), or orders placed against a contract awarded by another agency, enter the name and codes for the contractor establishment which will be performing under the contract. For Federal Supply Schedule orders, enter the name and codes of the contractor whose name appears on the schedule, not the name and codes of the agent to whom orders may be sent. For awards to the Canadian Commercial Corporation (CCC), enter the name and codes of the appropriate CCC office, except as noted in Item B5B.

Item B5A, Contractor Establishment Code.

(i) Enter the 9-position Contractor Establishment Code, assigned for the

Federal Procurement Data Center (FPDC), that identifies the contractor.

(ii) When the Contractor Establishment Code is not already on file or otherwise available to the contracting office, the CEC shall be obtained from one of the following sources:

(A) The offeror's response to the solicitation;

(B) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable Contractor Establishment Code;

(C) If not provided by the successful offeror, the FPDC Contractor Establishment Code file Alphabetical Listing shall be consulted.

(D) If this listing has no entry or has multiple Contractor Establishment Codes for the establishment, the applicable Contractor Establishment Code shall be obtained by contacting the office assigned responsibility by FPDC to provide a code. Contracting offices may request a code by any of the following methods: *1.* Telephoning 800-397-4472 or 215-776-1710/1764/1769/1788; *2.* Telefaxing 215-398-3688; *3.* Mailing inquiries to Dun & Bradstreet Central Data Collection, Dept. 178, Allentown, PA 18195. All requesters should provide the following information:

Name of requesting contracting office;
Contracting office location (city/town; state/country);
Contracting office area code and commercial telephone number;
Name of individual making the request;
Total number of requests, if more than one; and
Contractor establishment name, street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable, as displayed in Items B5C and B5D.

Item B5B, Commercial and Government Entity (CAGE) Code.

(i) Enter the 5-position (CAGE) code that identifies the Contractor plant or establishment.

(ii) For awards to the Canadian Commercial Corporation (CCC), enter the code which identifies the contractor establishment performing under the contract.

(iii) When the CAGE Code is not already on file or otherwise available to the contracting office, the code shall be obtained from one of the following sources:

(A) The offeror's response to the solicitation;

(B) The bimonthly H-8 microfiche publication issued by DLSC-JBDA, Federal Center, 74 N. Washington, Battle Creek, MI 49017-3084, telephone numbers: AUTOVON 932-4725, FTS 522-4725, commercial (616) 961-4725.

(C) On-line access to the CAGE file through the Defense Integrated Data System (DIDS);

(D) On-line access to the Defense Logistics Agency CAGE file through the DLA Network or dial-up capability; or

(E) Submission of a DD Form 2051, Request for Assignment of a CAGE Code, or electronic equivalent to DLSC-FBA at the above address. The contracting officer shall assist an offeror in obtaining the required CAGE Code(s). It is the responsibility of the contracting activity to request the assignment of the CAGE code by completing Section A of the DD Form 2051—*Request for Assignment of a Commercial and Government Entity (CAGE) Code.* (See 253.303-70-DD-2051). The prospective contractor will complete Section B of the form. The completed form will be submitted by the contracting activity to DLSC-FBA for processing and code assignment after it has verified the data submitted by the contractor.

(iv) Questions concerning obtaining computer tapes, electronic updates or code assignments should be directed to DLSC, Attn: DLSC-FBA, telephone numbers: AUTOVON 932-4358, FTS 522-4358, commercial (616) 961-4358.

Item B5C, Contractor name. In the space provided, enter the name (including division name) of the contractor.

Item B5D, Contractor address. In the space provided, enter the address of the contractor. Include street address (and/or P.O. Box), city/town, state/country, and ZIP code, if applicable.

Item B5E, Contractor's Taxpayer Identification Number (TIN). When required by FAR subpart 4.9, enter the TIN that identifies the contractor receiving the award. Otherwise, leave this item blank.

Item B5F, Parent TIN. When required by FAR subpart 4.9, enter the TIN of the parent company (common parent). Otherwise, leave this item blank.

Item B5G, Parent Name. If Item B5F is completed, enter the name of the contractor's parent company (common parent). Otherwise, leave this item blank.

Item B6, Principal Place of Performance. Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, place of mining, or place where a service is performed for the Government, including military installations.

(i) If more than one location is involved, show the location involving the largest dollar amount of the acquisition. Do not show more than one location in Item B6.

(ii) For purchase from regular dealers (FAR 22.601), the place of performance shall be the dealer's location if shipment is made from stock, or the subcontractor's location if shipment is made from a subcontractor's plant.

(iii) For construction contracts, report the actual site of construction.

(iv) For architect-engineering contracts, report the planned site of the construction.

(v) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(vi) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

Item B6A, City or Place Code.

(i) Where the place of performance is in the United States and Outlying Areas, enter the city or place code of the principal place of performance from FIPS PUB 55-2. If the city or locality is not listed, find the appropriate county in FIPS PUB 55-2 and enter the 5-digit place code for the county. For Washington, DC enter 50000. It may be necessary to refer to FIPS FUB 55-2, Paragraph 5.2, *Entry Selection With the Aid of the Class Code,* to ensure that the correct city or place code is chosen. The class code must be used in addition to the place code in many instances to correctly identify the code which most accurately identifies the place of performance.

(ii) Leave this item blank for foreign countries.

Item B6B, State or Country Code.

(i) Enter the numeric state code for the United States and Outlying Area. FIPS PUB 5-2, *Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States and Associated Areas,* or FIPS PUB 55-2 may be used for the identification of states and state equivalents in the United States and Outlying Areas.

(ii) Enter the alpha country code from FIPS PUB 10-3, *Countries, Dependencies, Areas of Special Sovereignty, and Their Principal Administrative Divisions,* to identify foreign countries.

Item B6C, City or Place/State or Country Names. Enter the name of the principal place of performance. Do not leave blank.

Item B7, Type of Obligation. This item is used to identify the nature of the amount to be entered in Item B8. Enter Code 1 to show an obligation; Code 2 to show a deobligation.

Item B8, Total Dollars. Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. Enter whole dollars only.

Item B9, Foreign Military Sale.

(i) If only part of a contracting action is for foreign military sales, that part (if in excess of $25,000) shall be reported on one DD Form 350, and the other part (if in excess of $25,000) shall be reported on a second DD Form 350. Any part of $25,000 or less shall be reported on the DD Form 1057.

(ii) Enter Code Y if the contracting action is under foreign military sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. If not, enter Code N.

Item B10, Multiyear Contract. Enter Code Y if this report concerns multiyear contracting for supplies or services pursuant to FAR 17.1; otherwise, enter Code N.

Item B11, Total Multiyear Value. Enter the estimated multiyear contract value if Item B10 is coded Y and Item B13 is coded 1 or 3. Enter whole dollars only. Otherwise, leave this item blank.

Item B12, Principal Product or Service.

Item B12A, FSC or Service Code. Enter a Federal Supply Classification Code, a Research, Development, Test and Evaluation (RDT&E) Code, or a Service Code in accordance with Section I, Volume I of the Department of Defense Procurement Coding Manual (DoD 4105.61M). Each DD Form 350 must contain a 4-character entry for this item. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(i) Research, development, test, and evaluation (RDT&E) is defined in FAR 35.001. Each DD Form 350 action for RDT&E shall be assigned a code beginning with the letter A in accordance with Section I, Part A of the referenced coding manual. Do not assign RDT&E codes for the acquisition (including rental or lease) of equipment, supplies, or services separately purchased in support of RDT&E work. Acquisition of services or supplies that is incidental to the fulfillment of RDT&E work, but does not require contractor RDT&E performance, shall be coded in accordance with Parts B and C, Section I of the referenced coding manual, even though such purchases are in support of RDT&E work and RDT&E funds are cited. In no case shall RDT&E codes be assigned for orders under GSA Federal Supply Schedule contracts.

(ii) Services. All services (except RDT&E actions) and lease or rental of equipment or facilities shall be coded in accordance with Part B, Section I of the referenced coding manual. Each category is assigned a series of 4-character codes for specific types of services and construction.

(iii) Supply. Acquisition of supply items shall be assigned a Federal Supply Classification (all numeric) Code from Part C, Section I of Volume I of the referenced coding manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2-1, H2-2, and H2-3 also may be used as a reference in identifying the correct 4-character code. Lease or rental of equipment/facilities should be coded as a service in accordance with Part B, Section I of the referenced coding manual.

Item B12B, DD Claimant Program Code. Enter the appropriate code that identifies the commodity described in Item B12E. Claimant Program Codes are defined in Section III, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M).

(i) If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

(ii) If the description in Item B12E is for research and development, the objective of the research and development shall control the Claimant Program code to be entered; e.g., if the objective of the research and development is a guided missile, enter Code A20.

(iii) If the description in Item B12E is for research that cannot be identified with a particular claimant program, enter Code S10.

(iv) Contracts for ship repair, inspection and repair as necessary (IRAN), modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible.

(v) Equipment rental (including rental of automated data processing equipment (as defined at Part 270)) and utility services shall be coded S10.

(vi) If a particular claimant program cannot be identified, enter Code S10 for services or code C9E for supplies or equipment.

Item B12C, System or Equipment Code. Enter the appropriate weapons system or equipment code in accordance with Section II, Volume I of the DoD Procurement Coding Manual (DoD 4105.61M). If the action is funded by the Strategic Defense Initiative (SDI), enter code CAA in this item in preference to any other applicable code. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition. If a weapon system or equipment code is not applicable, enter 3 zeros. DLA activities will use the code assigned by the sponsoring Service.

Item B12D, Standard Industrial Classification (SIC) Code. This item identifies the SIC of the procurement (as opposed to the SIC of the Manufacturer or Dealer). Enter the SIC Code in effect at the time of award from the OMB Standard Industrial Classification Manual. If more than one code is applicable to the action, enter the one that best identifies the product or service representing the largest dollar volume of acquisition.

Item B12E, Name or Description. Enter the name or brief description of the commodity or service. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Trident, Pershing, etc., or an identifying program number; e.g., WS-107A, can be used without classifying the report.

Item B13, Kind of Contracting Action.

(i) Enter one of the available codes as appropriate.

(ii) For a contract action which initially funds an award made in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons, enter the code best describing the action.

(iii) Actions with workshops for the blind or other severely handicapped including orders with workshops from the procurement list shall be reported as described in Code 3.

(iv) Actions placed with Federal Prison Industries (UNICOR) shall be reported as code 8.

Code 1—Initial Letter Contract. Enter this code when a new letter contract is executed. For a letter contract which is designated as a modification of an existing contract, enter Code A.

Code 2—Definitive Contract Superseding Letter Contract. Enter this code when applicable. Enter code A for a definitive modification which supersedes a letter contract designated as a modification of an existing contract.

Code 3—Definitive Contract (including notice of award). Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Use this code for definitive contract awards under the Small Business Administration 8(a) Program.

Code 4—Order Against DoD Basic Ordering Agreement. Enter this code when reporting orders against basic ordering agreements, priced exhibits and production lists entered into by a DoD Component. Use Codes A through G, as appropriate, for modifications of such orders.

Code 5—Order Against DoD Contract. Enter this code when reporting orders against indefinite delivery type contracts, DLA schedules, job orders, task orders, and the like where firm obligations are created by the issuance of such documents and where the basic contract was awarded by a DoD Component. Use this code for orders placed against DoD contracts with the Small Business Administration 8(a) Program. Also use this code for contracting actions placed with workshops for the blind or other severely handicapped. Use Codes A through G as appropriate, for modifications of such orders.

Code 6—Order/Modification Under Federal Supply Schedule. Enter this code for all contracting actions (including modifications) under a Federal Supply Schedule contract (see FAR 8.401). This includes contracting actions against Veterans Administration Supply Schedules, GSA ADP Schedule contracts and GSA Area Contracts for Utility Services.

Code 7—Order Against Another Federal Agency's Contract. Enter this code for orders against a contract awarded by another Federal agency, other than a Federal Supply Schedule. Code 7 includes modifications and orders against contracts written by the Government Printing Office, Federal Prison Industries, Tennessee Valley Authority, or the Departments of Treasury, Agriculture or Energy.

Code 8—Action With Another Federal Agency. Enter this code for all contracting actions, including modifications, placed directly with another Federal Agency or Government Corporation, e.g., Government Printing Office, Federal Prison Industries (UNICOR), Tennessee Valley Authority, or the Departments of Treasury, Agriculture or Energy, where the Federal Agency or Government Corporation is acting as the contractor. Use code 7 for orders placed with a contractor who is performing on a contract written by another Federal Agency or Government Corporation.

Code A—Additional Work, New Agreement. Enter this code when additional work is acquired by means of a bilateral supplemental agreement which increases the scope of existing contracts, including letter contracts.

Code B—Additional Work, Other. Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(i) Exercise of options for increased quantities or extended performance.

(ii) Incremental yearly buys under multiyear contracts.

(iii) Amendments to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts.

Code C—Funding Action. Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year.

Code D—Change Order. Enter this code when reporting change orders issued pursuant to the "Changes," "Differing Site Conditions," or similar provisions of existing contracts.

Code E—Termination for Default. Enter this code for termination for default.

Code F—Termination for Convenience. Enter this code for termination for convenience.

Code G—Cancellation. Enter this code for a cancellation action. Do not use this code to report the cancellation of a DD Form 350. (See Item A1).

(c) Part C of DD Form 350—The following rules apply to each of the items listed in Part C of DD Form 350:

(1) If Item B9 is coded Y or Item B13 is coded 8, leave all items in this Part C blank.

(2) If Item B13 is coded 1 through 4, 6 or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item.

(3) If Item B13 is coded 5, enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(4) If Item B13 is coded 7, complete Items C1, C2, C3, C5, C7, C8, C9, C10, C13A, C13B & C13D based on information obtained from the agency which awarded the initial contract. Leave Items C4, C6, C11 and C13C blank. Complete Item C12 based on information in the contract document.

(5) If Item B13 is coded B through G, the correct coding is controlled by the date of the solicitation.

(i) For solicitations issued prior to 1 April 1985 (pre-CICA), leave items C6 through C9 blank and enter the same code in each other item in Part C that was reported for the original contract governing this transaction.

(ii) For solicitations issued on or after 1 April 1985 (post-CICA), enter the same code in each item in Part C that was reported for the original contract governing this transaction.

(6) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

Item C1, Synopsis.

Code Y—Enter if a synopsis of the proposed action was prepared and transmitted to the Commerce Business Daily in accordance with FAR 5.2.

Code N—Enter if Code Y does not apply and complete Item C2.

Item C2, Reason Not Synopsized. Leave blank if Item C1 was coded Y, if not, enter the appropriate code.

Code A—The action was not synopsized due to urgency.

Code B—The action was not synopsized due to some other reason.

Item C3, Extent Competed.

(i) Section 8(a) awards competed pursuant to FAR Subpart 6.2 shall be reported in Code A, Competed.

(ii) Exclude the following from Code A:

(A) Purchases of brand name commercial products for authorized resale;

(B) Awards for utilities or utility systems when circumstances dictate that only one supplier can furnish the service (FAR 6.302-1(b)(3));

(C) Any acquisition authorized or required by statute to be awarded to a specific source or through another agency pursuant to FAR 6.302-5(b).

(iii) Enter the appropriate code shown below.

Code A—Competed Action. Enter code A if item B13 is coded 6 or when any of the following conditions apply:

(i) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(ii) Full and open competition procedures after exclusion of sources were used in order to establish/maintain alternative sources, to set aside a procurement for small business or labor surplus area concerns, or to compete Section 8(a) awards (FAR 6.2);

(iii) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received;

(iv) Contract action resulted from a contract awarded prior to CICA that used two-step sealed bidding, other sealed bidding, or was negotiated competitively.

Code B—Not Available for Competition. Enter Code B when any of the following conditions apply to the award:

(i) Awards for utilities or utility systems when circumstances dictate that only one supplier can furnish the service (FAR 6.302-1(b)(3));

(ii) Brand name commercial products for authorized resale;

(iii) Procurements authorized or required by statute to be awarded to a specific source pursuant to FAR 6.302-5(b) (2) or (4). Included are the qualified nonprofit agencies for the blind or other severely handicapped, or 8(a) programs (see FAR 19.8);

(iv) International Agreements;

(v) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD(P)) has determined that there is no opportunity for competition.

NOTE.—FMS awards and actions with another Federal Agency or Government Corporation are not entered in Item C3. These actions are treated as not available for competition in published competition reports although these actions are not reported in Item C3.

Code C—Follow-on to Competed Action. Enter Code C when the action pertains to an acquisition placed with a particular contractor to continue or augment a specific competed program where such placement was necessitated by prior acquisition decisions.

Code D—Not Competed. Enter Code D when Codes A, B, or C do not apply.

Item C4, Sea Transportation. Enter the appropriate code below:

Code N—No. enter Code N if the contractor's response to DFARS 252.247-7202 indicates the contractor does not anticipate that any of the supplies being provided will be transported by sea.

Code Y—Yes. Enter Code Y if the contractor's response to DFARS 252.247-7202 indicates the contractor anticipates that any of the supplies being provided will be transported by sea.

Code U—Unknown. Enter Code U if the contractor did not complete the representation at 252.247-7202 or the solicitation did not contain DFARS 252.247-7202.

Item C5, Type of contract. (i) Enter the code below which corresponds to the type of contract provided for in the provisions of the action reported:

(ii) Multiple contract types. Where the action involves more than one type of contract, the predominant type based on dollars shall be entered. However, if any nonpredominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the action. The total of the DD Form 350 reports shall equal the total contract action.

(iii) Letter contracts. When reporting original letter contracts and amendments thereto, enter the code for the type of contract that will be used when the letter contract is converted to a definitive contract.

Code A—Fixed Price Redetermination.

Code J—Firm Fixed Price.

Code K—Fixed Price Economic Price Adjustment.

Code L—Fixed Price Incentive.

Code R—Cost Plus Award Fee.

Code S—Cost Contract.

Code T—Cost Sharing.

Code U—Cost Plus Fixed Fee.

Code V—Cost Plus Incentive Fee.

Code Y—Time and Materials.

Code Z—Labor Hour.

Item C6, Number of Offerors Solicited. If Item B13 is coded 6 enter Code 2. If Item B13 is coded 7, leave Item C6 blank. Otherwise, enter the code below which describes the number of offerors solicited.

Code 1—Enter if only one offeror was solicited.

Code 2—Enter if more than one offeror was solicited.

Item C7, Number of Offers Received. Enter the code below which describes the number of offers received. If Item B13 is coded 6, enter Code 2.

Code 1—Enter where only one offer was received.

Code 2—Enter when more than one offer was received.

Item C8, Solicitation Procedures. (i) This item pertains to the requirements of FAR part 6, subparts 6.1, 6.2, and 6.3, (with the exception of the statutory authorities for other than full and open competition (Subpart 6.3) which are reported in Item C9 below). Code A through K designate the full and open competition requirements set forth in FAR part 6. Code M designates actions which do not require the application of the Competition in Contracting Act (see FAR 6.001(b)). Code N designates exceptions to full and open competition. (See FAR 6.3).

(ii) Modifications within the scope of a contract and delivery orders under requirements or definite quantity contracts shall be reported the same as the initial contract. Delivery orders under indefinite quantity contracts shall be reported the same as the initial contract when the conditions in FAR 6.001(e) are met. If these conditions are not met, the delivery order shall be reported pursuant to the conditions applicable to that order.

(iii) If Item B13 is coded 6, enter Code B for single award schedules or Code F for multiple award schedules.

(iv) Enter Code K for all set-asides, including a Small Disadvantaged Business Set-Aside (see 206.203-70), Small Business Innovation Research (SBIR) actions (see FAR 6.203), a total set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) (see 206.270), or a portion of a Broad Agency Announcement (BAA) which was set-aside for HBCUs or MIs.

(v) Report competitive 8(a) awards using Code K. Report 8(a) awards which were not competed by using Code N.

(vi) Enter the code below which accurately describes the action.

Code A—Full and Open Competition—Sealed Bidding. Enter if the action resulted from an award pursuant to FAR 6.102(a).

Code B—Full and Open Competition-Competitive Proposals. Enter if the action resulted from an award pursuant to FAR 6.102(b).

Code C—Full and Open Competition—Combination. Enter if the action resulted from an award using a combination of competitive procedures (e.g., Two-Step Sealed Bidding) pursuant to FAR 6.102(c).

Code D—Architect-Engineer. Enter if the action resulted from selection of sources for architect-engineer contracts pursuant to FAR 6.102(d)(1).

Code E—Basic Research. Enter if the action resulted from competitive selection of basic research proposals pursuant to FAR 6.102(d)(2).

Code F—Multiple Award Schedule. Enter if the action is an award of a multiple award schedule pursuant to FAR 6.102(d)(3) or an order against such a schedule.

Code G—Alternate Source-Reduced Cost. Enter if the action resulted from use of procedures to reduce overall costs pursuant to FAR 6.202(a)(1).

Code H—Alternate Source—Mobilization. Enter if the action resulted from use of procedures for having a facility available for national defense or industrial mobilization pursuant to FAR 6.202(a)(2).

Code J—Alternate Source—Engineering/R&D Capability. Enter if the action resulted from use of procedures for establishing or maintaining an essential engineering, research, or development capability pursuant to FAR 6.202(a)(3).

Code K—Set-Aside/Reservation.

(i) Enter if the action resulted from use of procedures for set-asides pursuant to 206.203-70, 206.270 or FAR 6.203.

(ii) Report as Code K those section 8(a) awards competed pursuant to FAR subpart 6.2.

(iii) Report as Code K those actions with a blind or other severely handicapped organization which was made pursuant to the set-aside provisions in FAR subpart 6.2.

Code M—Otherwise Authorized by Statute. Enter if the agency uses contracting procedures that are expressly authorized by statute and not addressed in FAR part 6 (See FAR 6.001(b)). Code M should not be used for statutes addressed in FAR 6.302-5; these statutes require Code N in Item C8 and Code 5A in Item C9.

Code N—Other Than Full and Open Competition. Enter if the action resulted from use of other than full and open competition pursuant to FAR 6.3. Specifically included are those awards authorized or required by statute where, pursuant to FAR 6.302-5(b)(2) or (4), acquisition was made from a specified source, i.e., qualified nonprofit agencies for the blind or other severely handicapped (NIB/NISH or other workshops); or the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act.

Item C9. Authority for Other Than Full and Open Competition. Enter the appropriate code below when Item C8 is coded N. Explanations of the authorities are set forth in FAR 6.302.

Code 1A—Unique Source. Enter if the action was justified pursuant to FAR 6.302-1(b)(1).

Code 1B—Follow-on Contract. Enter if action was justified pursuant to FAR 6.302-1(a)(2)(ii).

Code 1C—Unsolicited Research Proposal. Enter if action was justified pursuant to FAR 6.302-1(a)(2)(i).

Code 1D—Patent/Data Rights. Enter if action was justified pursuant to FAR 6.302-1(b)(2).

Code 1E—Utilities. Enter if action was justified pursuant to FAR 6.302-1(b)(3).

Code 1F—Standardization. Enter if action was justified pursuant to FAR 6.302-1(b)(4).

Code 1G—Only One Source—Other. Enter if the action was justified pursuant to FAR 6.302-1 in a situation other than the examples cited in Codes 1A through 1F above.

Code 2A—Urgency. Enter if action was justified pursuant to FAR 6.302-2.

Code 3A—Mobilization. Enter if action was justified pursuant to FAR 6.302-3(a)(2)(i).

Code 3B—Essential R&D Capability. Enter if action was justified pursuant to FAR 6.302-3(a)(2)(ii).

Code 4A—International Agreement/Foreign Military Sales. Enter if action was justified pursuant to FAR 6.302-4.

Code 5A—Authorized by Statute. Enter if action was justified pursuant to FAR 6.302-5(a)(2)(i).

Code 5B—Authorized Resale. Enter if action was justified pursuant to FAR 6.302-5(a)(2)(ii).

Code 6A—National Security. Enter if action was justified pursuant to FAR 6.302-6.

Code 7A—Public Interest. Enter if action was taken pursuant to FAR 6.302-7.

Item C10—Subject to Labor Standards Statutes. If Item B13 is coded 6, leave Item C10 blank. Otherwise, enter the appropriate code as follows:

Code A—Walsh-Healy Act, Manufacture. Enter this code when subject to the provisions of FAR 22.6 and the offeror represents that it is a manufacturer.

Code B—Walsh-Healy Act, Regular Dealer. Enter this code when subject to the provisions of FAR 22.6 and the offeror represents that it is a regular dealer.

Code C—Service Contract Act. Enter this code when subject to the provisions of the Service Contract Act (see FAR Part 37).

Code D—Davis-Bacon Act. Enter this code when subject to the Davis-Bacon Act.

Code Z—Not Subject to Above. Enter this code when this action is not subject to any of the statutory requirements above.

Item C11, Certified Cost or Pricing Data. If Item B13 is coded 6 or 7, leave Item C11 blank. Otherwise, enter the appropriate code below:

Code Y—Certified cost or pricing data were obtained (see FAR 15.804-2).

Code N—Certified cost or pricing data were not obtained. Data were not required (see FAR 15.804-2), or an exemption was granted (see FAR 15.804-3 (a)-(g)).

Code W—Certified cost or pricing data were not obtained. The requirement was waived (see FAR 15.804-3(i) and DFARS 215.804-3(a) (S-70) and (i)).

Item C12, Contract Financing (Progress Payments or Advance Payments). Enter the appropriate code as follows:

Code A—Enter if the action contains the clauses at 252.232-7007, FAR 52.232-16, or Alternate I.

Code B—Enter if the action contains the clause at 252.232-7004.

Code C—Enter if the action provides Percentage of Completion Progress Payment financing (see 232.102(e)(2)) and is for either:

(i) Construction; or

(ii) Shipbuilding and ship conversion, alteration or repair.

Code D—Enter if the action provides Unusual Progress Payments or Advance Payments (see FAR 32.4 and FAR 32.501-2).

Code Z—Enter if none of the above apply.

Item C13—Foreign Trade Data. The term "United States" (U.S.), as used in this item, includes the United States and Outlying Areas as defined in this subpart, but excludes the Trust Territory of Palau.

Item C13A, Number of Offerors. Enter the number of offerors of foreign end products as defined in FAR 25, or services performed by foreign concerns. If zero, enter 0; if greater than 9, enter 9.

Item C13B, Buy American Act Percent Difference.

(i) Enter 2 zeros (00) if the evaluation factor under the Buy American Act is not used.

(ii) If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a two position whole number (i.e., for 5%, enter 05; for 11%, enter 11).

Item C13C, Place of Manufacture/Service. This block is used to gather data on foreign end products and on services provided by foreign concerns.

(i) If Item B13 is coded 6 or 7, leave Item C13C blank.

(ii) If the product is determined to be a domestic end product (see 225.101), leave this item blank.

(iii) If the product is determined to be a foreign end product or is a service provided by a foreign concern, enter one of the codes listed below:

Code A—U.S. Enter this code for:

(i) End products manufactured in the U.S. but still determined to be foreign (50 percent or more of the cost of its *components* represents components which were not mined, produced or manufactured inside the U.S. or inside qualifying countries); or,

(ii) Services performed in the U.S. by a foreign concern.

Code B—Foreign. Enter this code for end products or services procured from either qualifying countries or non-qualifying countries as follows:

(i) Foreign *end products* manufactured, mined or grown outside the U.S.; or,

(ii) Services performed by a foreign concern outside the U.S.

Item C13D, Country of Origin. If the product is a foreign end product, or the service is performed by a foreign concern, enter the FIPS PUB 10-3 code of the Country of Origin. If more than one foreign country is involved enter the code of the predominant foreign country based on dollar value.

(d) Part D of DD Form 350—The following rules apply to each of the items listed in Part D of DD Form 350:

(1) If Item B9, Foreign Military Sale, is coded Y or if Item B13 is coded 6 or 8, leave all items in this part blank.

(2) If Item B13 is coded 1 through 4, or A, coding of all items in this Part D shall be accomplished in accordance with the coding instructions for that item, and the status of the concern, such as its size or ownership, shall be determined in accordance with 219.301-70 and FAR 19.301.

(3) If Item B13 is coded 5, or B through G, enter the same code in each item in Part D that was reported on the DD Form 350 to the original contract governing this transaction.

(i) If a DD Form 350 report was not submitted because none was required for the original action, enter the code which is applicable to the original contract action governing this transaction.

(ii) If the code representing the original action is no longer available, the definition of the original code has changed, or a data element has been added to the system after the original contract report, enter the most accurate code now available.

(4) If Item B13 is coded 7, complete items D1, D4A, D4B, D4D, D6 and D8 based on information from the agency which awarded the original contract. Complete Items D2, D3, D4C, D5, D9, D10, amd D11 in accordance with the instructions for that item. Leave all other items in Part D blank.

Item D1, Type of Business.

Code A—Small Disadvantaged Business (SDB). Enter Code A if the award was made to an SDB concern as defined in 219.001 and the place of performance is within the United States and Outlying Areas.

Code B—Other Small Business. Enter Code B if the award was made to a small business concern as defined in FAR 19.001, other than a small disadvantaged business concern, and the place of performance is within the United States and Outlying Areas.

Code C—Large Business. Enter Code C if the award was made to a domestic large business concern, and the place of performance is within the United States and Outlying Areas.

Code D—Workshop for the Blind or Severely Handicapped. Enter Code D if the award was made to a workshop for the blind or other severely handicapped (FAR 8.701), and the place of performance is within the United States and Outlying Areas.

Code F—Hospital. Enter Code F if the award is made to a hospital, and the place of performance is within the United States and Outlying Areas.

Code L—Foreign Concern/Entity. Enter Code L if the award is made to a foreign concern, the Canadian Commercial Corporation, or a non-U.S. chartered nonprofit institution.

Code M—Domestic Firm Performing Work Outside the United States. Enter Code M if the award is made to a domestic concern or a domestic nonprofit institution and the place of performance is outside the United States and Outlying Areas.

Code N—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter Code N for an award to an HBCU/MI as defined at 226.7002 and the place of performance is within the United States and Outlying Areas.

Code P—Other Educational. Enter Code P if award was made to an educational institution not qualifying as a HBCU/MI, and the place of performance is within the United States and Outlying Areas.

Code Z—Other Nonprofit. Enter Code Z if the award was made to a nonprofit or not for profit institution, that did not meet any of the above criteria and the place of performance is in the United States and Outlying Areas.

Item D2—Reason Not Awarded to SDB. If Item B13 is coded 7, enter Code Z in Item D2. If item D1 above is coded B, or C, enter the appropriate code below. Otherwise, leave this item blank.

Code A—No Known SDB Source. Enter if applicable.

Code B—SDB Not Solicited. Enter this code if there was a known SDB source but it was not solicited.

Code C—SDB Solicited—No Offer. Enter if an SDB was solicited but no offer was received from such concern or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid under this solicitation.

Code D—SDB Solicited—Offer Not Low. Also use this code if the SDB was not willing to accept award of a partial Small Business set-aside portion of an action at the price offered.

Code Z—Other Reason. Report this code when a SDB did not receive the award for any other reason.

Item D3, Reason Not Awarded to Small Business Concern. A Small Disadvantaged Business is included in the term Small Business Concern. If Item B13 is coded 7, enter Code Z in Item D3. If Item D1 above was coded C, enter an appropriate code from the available codes below. Otherwise, leave blank.

Code A—No Known Small Business Source. Enter if applicable.

Code B—Small Business Not Solicited. Enter this code if there was a known small business source but it was not solicited.

Code C—Small Business Solicited—No Offer. Enter if a small business concern was solicited, but no offer was received from such concern, or the concern did not offer sufficient quantity to cover the total requirement but received a separate award for the portion bid on under this solicitation.

Code D—Small Business Solicited—Offer Not Low. Enter this code if a small business concern was solicited but the low or most advantageous offer was not from small business. Also enter Code D if a small business concern was not willing to accept award of a set-aside portion of an action at the price offered by the Government.

Code Z—Enter if not awarded to small business for any other reason.

Item D4 Preference Program.

Item D4A—Type of Small Business Set-Aside. For Historically Black Colleges and Universities and Minority Institution set-asides, enter Code A and report in Item D4C below. Enter the appropriate code shown below:

Code A—None. Enter this code if no set-aside preference for small business concerns was given. Enter this code for Historically Black Colleges and Universities and Minority Institution set-asides and report in Item D4C below.

Code B—Total Small Business Set-Aside. Enter this code if total small business set-aside preference was given pursuant to FAR 19.502-2 or the action resulted from the Small Business Innovation Research Program.

Code C—Partial Small Business Set-Aside. Enter this code if partial small business set-aside preference was given pursuant to 219.502-3(S-70) or FAR 19.502-3.

Code D—Combined Small Business/Labor Surplus Set-Aside. Enter this code if combined labor surplus and set-aside preference was given pursuant to 219.502-70. The place of performance shown in Item B6 above must be located within a Labor Surplus Area.

Code E—Total Small Disadvantaged Business Set-Aside. Enter this code if this action was totally set-aside for small disadvantaged businesses pursuant to 219.502-72 and complete Item D4B below.

Code Y—Enter this code if the action resulted from an emerging small business set-aside (219.1070-2).

Item D4B—Type of Small Disadvantaged Business Set-Aside/SDB Preference. Enter the appropriate code shown below:

Code A—None. Enter this code if no preference was given or award was not to an SDB.

Code B—Section 8(a) awards. Enter this code if the contract was awarded to the Small Business Administration (SBA) under section 8(a) of the Small Business Act pursuant to FAR 19.8.

Code C—Total SDB Set-Aside. Enter this code if the contract was awarded to an SDB firm as a result of SDB set-aside pursuant to 219.502-72.

Code D—SDB Evaluation Preference—Unrestricted. Enter this code if the solicitation was unrestricted but the SDB received an award as a result of an evaluation preference pursuant to 219.7000.

Code E—SDB Preferential Consideration—Partial Small Business Set-Aside. Enter this code if the action was partially set-aside for small business and preferential consideration resulted in an award to the SDB pursuant to 219.502-3(S-70).

Item D4C—Type of HBCU or MI Set-Aside Preference. If Item B13 is coded 7, use Code A. Otherwise, enter the appropriate code shown below:

Code A—None. Enter this code if the action was not set-aside for HBCUs or MIs.

Code B—Enter this code if the action was totally set-aside for HBCUs and MIs pursuant to 226.7004.

Code C—Enter this code if the action was partially set-aside for HBCUs or MIs pursuant to 226.7004.

Item D4D—Other Preference Program. Enter the appropriate code below which identifies whether or not additional preference was given in this action. Combined Small Business/Labor Surplus Set-Asides are reported in Item D4A above. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code B or C is entered, the entry in Item B6 must be a location which on the date of the initial action was located within a labor surplus area.

Code A—Directed to Workshops. Report this code for an award to a workshop for the blind or a workshop for the other severely handicapped pursuant to FAR 8.7 for an item(s) on the Procurement List.

Code B—Partial Labor Surplus Area Set-Aside. Enter if the action was awarded to a concern in a labor surplus area wherein preference was given under partial labor surplus area set-aside procedures (220.7003).

Code C—Tie Bid Labor Surplus Area Preference. Enter this code if the contract action was awarded to a concern in a labor surplus area and tie bid preference (FAR 14.407-6) was given.

Code Z—None of the Above. Enter this code if no other code in this item applies.

Item D4E, Premium Percent. Complete only if Item D4B is coded C through E or Item D4C is coded B or C. Otherwise, leave blank.

(i) If Item D4B is coded C through E or Item D4C is coded B or C, enter the applicable premium percentage.

(ii) If Item B13 is coded 1 through 4 or A and a premium percentage was paid for the contract action, enter the premium percentage as a three digit number calculated in accordance with 219.202-5(b) and rounded to the nearest tenth, (e.g., 7.55% shall be entered as 076).

(iii) If Item B13 is coded 5 or B through G, enter the same percentage as the initial contract action (see 219.202-5(b)).

(iv) If the contract did not result in the payment of a premium, enter three zeroes (000).

Item D5—Ethnic Group. If Item B13 is coded 7, leave this item blank. If the award was made to a small disadvantaged business concern, enter the code below which corresponds to the ethnic group the contractor represented (see representation provision 252.219-7005). Otherwise, leave blank.

Code A—Subcontinent Asian (Asian-Indian) American.

Code B—Asian-Pacific American.

Code C—Black American.

Code D—Hispanic American.

Code E—Native American.

Code F—Other SDB (certified/determined by SBA).

Code Z—No representation.

Item D6, Women-Owned Small Business.

Code N—Enter if the contractor's response to FAR 52.219-3 indicates the firm is not a women-owned small business.

Code Y—Enter if the response to FAR 52.219-3 indicates in the affirmative that the contractor is a women-owned small business.

Code U—Enter if the information is not available because the contractor did not complete the representation under FAR 52.219.3.

Item D7—Small Business Innovation Research (SBIR) Program (Public Law 97-219). If Item B13 is coded 7, leave this item blank. Otherwise, enter the appropriate code as follows:

Code A—The action is not in support of a Phase I or II SBIR Program.

Code B—The action is related to a Phase I contract in support of the SBIR Program.

Code C—The action is related to a Phase II contract in support of the SBIR Program.

Item D8, Subcontracting Plan for Small Business, Small Disadvantaged Businesses or Historically Black Colleges and Universities or Minority Institutions. Enter the appropriate code as follows:

Code A—Plan Not Included—No Subcontracting Possibilities. Enter if a subcontracting plan was not included in the contract because subcontracting possibilities do not exist (FAR 19.705-2(c)).

Code B—Plan Not Required. Enter if the subcontracting plan was not required (FAR 19.702(b)).

Code C—Plan Required—No Incentive Provisions. Enter if the subcontracting plan was required but the incentive provisions referenced in FAR 19.708(c) were not included.

Code D—Plan Required—Includes Incentives Provisions. Enter if the subcontracting plan was required and incentive provisions referenced in 219.708(c)(1) or FAR 19.708(c) were included for subcontracting with small business, small disadvantaged business, historically black colleges and universities, or minority institutions.

Item D9, Small Business Competitiveness Demonstration Program Test. The Small Business Competitiveness Demonstration Program is set forth in FAR 19.10. Supplies and services subject to the program are set forth in FAR 19.1005 and 219.1005(b). (For Army, see also AFARS Part 19.10.)

(i) If Item B13 is coded 1 through 4, or A, code this item in accordance with the instructions below.

(ii) If Item B13 is coded 5 or B through G, code this item with the same code used to report the original contract governing this action. If the original contract governing this action was awarded before the program began, enter Code N.

(iii) If Item B13 is coded 7, use Code N.

(iv) Enter the appropriate code below.

Code Y—Enter this code for any action to a U.S. business concern awarded for either the four Designated Industry Groups or the ten Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.

Code N—Otherwise, enter this code.

Item D10, Small Business Size. Complete only when Item D9 is coded Y and the contract action is awarded to a small business. Enter the code of the size range that includes the size of the business as represented by the contractor.

Number of employees	Annual gross revenues
Code:	
A 50 or fewer	Code M $1 Million or less
B 51-100	N Over $1M Thru $2M
C 101-250	P Over $2M-$3.5M
D 251-500	R Over $3.5M-$5M
E 501-750	S Over $5M-$10M
F 751-1000	T Over $10M-$17M
G Over 1000	U Over $17 Million

Item D11, Emerging Small Business. Complete this item only if Item D9 is coded Y and the contracting action is for one of the four designated industry groups. Otherwise leave blank.

Code Y—Enter this code if the contractor represents it as an emerging small business concern.

Code N—Otherwise, enter this code.

(e) Part E of DD Form 350. (For Army, see also AFARS Part 19.10.)

Item E1, Contracted Advisory & Assistance Services. Enter the appropriate code below:

Code Y—Enter if the action includes any Contracted Advisory and Assistance Service (CAAS) as defined in FAR 37.2.

Code N—Enter if Code Y does not apply.

Item E2, Set-Aside Value. If this contracting action is to a public or private organization for the blind or other severely handicapped as a result of a total or partial small business set-aside (FAR 19.5) or a labor surplus area set-aside (FAR 20.2), enter the contract amount, i.e., contract face value, of the set-aside portion of this award in whole dollars. Otherwise, leave blank.

Item E3, Next Low Offer. If Item E2 is required to be completed, also enter, in whole dollars, the cumulative value of the next low offer(s) of small business firms on those items which had been displaced by the organization for the blind or other severely handicapped. Otherwise, leave blank.

Item E4 through E8: Reserved.

(f) Part F of DD Form 350.

Item F1, Name of Contracting Officer or Representative. Enter the name (Last, First, MI) of the contracting officer or representative.

Item F2, Signature. Contracting officer or representative.

Item F3, Telephone Number. Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

Item F4, Date. Enter date (YYMMDD) that the DD Form 350 Report is submitted.

[53 FR 34091, Sept. 2, 1988, as amended at 53 FR 43205, Oct. 26, 1988; 53 FR 50413, Dec. 15, 1988; 54 FR 4246, Jan. 27, 1989; 54 FR 5484, Feb. 3, 1989; 54 FR 11724, Mar. 22, 1989; 54 FR 16115, Apr. 21, 1989; 54 FR 26205, June 22, 1989; 54 FR 28420, July 6, 1989; 54 FR 46901, Nov. 8, 1989; 55 FR 19076, May 8, 1990]

204.671-6 Instructions for preparing magnetic tape of DD Form 350 actions, DD-P&L(M)1014.

A magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR-WHS by the DoD reporting elements specified at 204.671-4(b) to cover individual DD Form 350 transactions for each month (noncumulative). The instructions for preparing the tape are developed by DIOR-WHS with the agreement of the Departments.

[53 FR 34091, Sept. 2, 1988, as amended at 55 FR 19076, May 8, 1990]

204.672 Monthly contracting summary of actions $25,000 or less (DD Form 1057).

204.672-1 Scope.

This section prescribes the reporting on DD Form 1057 of contracting actions of $25,000 or less. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 204.671-2.

[53 FR 34091, Sept. 2, 1988; 53 FR 50414, Dec. 15, 1988, as amended at 55 FR 19076, May 8, 1990]

204.672-2 Applicability and coverage.

(a) A DD Form 1057 shall be prepared by each contracting office of the Department of Defense to which a reporting office code has been assigned in the DoD Procurement Coding Manual, Volume III. The DD Form 1057 shall cover all contracting actions of $25,000 or less including any actions for which an Individual Contract Action Report (DD Form 350) may have been prepared pursuant to 204.675. Separate codes may be assigned to an installation, base, or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of acquisition, such as base and central contracting, or RDT&E and non-RDT&E acquisition. Subject to the approval of the organizations listed in 204.672-3, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit contracting actions of $25,000 or less involving:

(1) Appropriated funds;

(2) Contract authorizations;

(3) Stock or other revolving funds which are replenished or reimbursed from appropriated funds;

(4) Appropriated funds transferred to the Departments, such as Military Assistance Program funds; and,

(5) Appropriated funds obligated pursuant to provisions of Public Law 85-804.

(c) The report shall exclude actions of $25,000 or less which:

(1) Involve nonappropriated funds;

(2) Involve orders placed against indefinite delivery contracts entered into by the Military Sealift Command or orders for petroleum or petroleum products entered into by the Defense Fuel Supply Center or the Defense General Supply Center. These offices shall report the estimated total cost of indefinite delivery contracts;

(3) Are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;

(4) Are orders on GSA stores depots;

(5) Involve Government bills of lading or transportation requests; or,

(6) Are for purchase of land, or rental/lease of real property where the contracting actions were executive by GSA".

(d) Actions and dollars shall be reported as indicated below:

(1) *Adjustments.* Revised DD Form 1057 reports shall not be submitted; but the amounts of corrections or adjustments, if required, shall be included in the report of the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "-" preceding the amount to signify a credit entry.

(2) *Number of actions.* Enter the number of actions being reported as follows:

(i) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (B) below, each call or order under a blanket purchase agreement, basic ordering agreement, or indefinite delivery contract shall be counted as an action. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(ii) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $25,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(A) Meals and lodging;

(B) Automatic deliveries, such as, bread, milk, and ice cream;

(C) Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on electricity and gas contracts for all Naval Shore Establishments.

(3) *Dollar value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. If the net amount is a decrease, enter the symbol "-" immediately preceding the amount to signify a credit entry. Do not enter parentheses.

[53 FR 34091, Sept. 2, 1988, as amended at 54 FR 4247, Jan. 27, 1989; 54 FR 16115, Apr. 21, 1989; 54 FR 26205, June 22, 1989]

204.672-3 Due date and distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date may be extended by 10 additional calendar days, but the cut-off date must be no later than 30 September.

(2) Letter of transmittal is not required.

(b) Distribution of the DD Form 1057 shall be as follows:

(1) Army contracting offices, including Corps of Engineers Civil works to:

U.S. Army Contracting Support Agency, Attn: Contract Support Office (SFRD-KS), Room 1C642, the Pentagon, Washington, DC 20310-0103

(2) Navy contracting offices as directed by NAVSUP-024.

(3) Air Force contracting offices as directed by SAF/AQCX.

(4) Defense Logistics Agency contracting offices as directed by HQ DLA.

(5) All other contracting offices of the Department of Defense shall forward the signed originals to the office indicated in (b)(1) above.

(c) Contracting actions of $25,000 or less which are reportable in accordance with 204.672-2 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

204.672-4 Definitions.

The terms used on DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. For the purposes of this subsection, the following terms have the meanings stated below:

Delivery Orders—GSA Federal Supply Schedules is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by GSA.

Delivery Orders—Other Federal Supply Schedules is restricted to orders and modifications of such orders under Federal Supply Schedules awarded by an Agency other than GSA. Orders under DoD or civilian agency indefinite delivery contracts which are not classified as Federal Supply Schedules are to be reported as "delivery orders—all others."

Delivery Orders—All Other includes orders under basic ordering agreements, orders under indefinite delivery contracts, and modifications of such orders.

Other Contracting Actions includes actions using other procurement methods not reported above, such as large purchases, tasking orders, job orders and modification of such actions.

Small Purchase Procedures as defined in FAR Part 13 includes: Purchase Orders; Orders under Blanket Purchase Agreements; Modifications to small purchase actions.

Tariff or Regulated Industry means an industry in which rates are fixed or adjusted by a Federal, State or other public regulatory body.

United States and Outlying Areas includes American Samoa, the Federated States of Micronesia, Guam, the Marshall Islands, the Northern Mariana Islands, the Trust Territory of Palau, Puerto Rico, the U.S. Minor Outlying Islands and the Virgin Islands of the U.S.

204.672-5 Instructions for completion of the DD Form 1057.

(a) Section A, General Information.

Line A1—Month Ending. Enter the year, month and day indicating the ending date of the month reported. Enter each segment as a 2-digit number using 01 through 12 for January through December. For example, for the month ending 30 April 1989, enter 890430.

Line A2—Contracting Office and Mailing Address. Enter sufficient detail to establish the identity of the contracting office submitting the report.

Line A3—Reporting Office Code. Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item A3 of DD Form 350.

(b) Section B, Contracting Actions. The entries for Lines B1 through B7E include new awards and modifications. For Lines B3 through B6, enter the total number of actions and total dollar value of actions and also complete each subcategory shown.

Line B1—Tariff or Regulated Acquisitions, Total. Enter on line B1 the number and dollar value of actions reportable as tariff or regulated industry actions (sole source and service rates are fixed or adjusted by a Federal, State or other public regulatory body).

Line B2—Contract for Foreign Government or International Organization. Enter the total number of actions and total dollar value of actions where the foreign government or international organization bears any part of the cost of the action. Report any actions placed directly with a foreign government on this line, e.g., base maintenance performed with the foreign government acting as the contractor. Also report any actions placed directly with another Federal Agency on this line.

Line B3—Small Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Small Business concerns and the place of performance was in the "United States and Outlying Areas" as defined in 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B3A—Small Purchase Procedures.

Line B3B—Delivery Orders—GSA Federal Supply Schedules.

Line B3C—Delivery Orders—Other Federal Supply Schedules.

Line B3D—Delivery Orders—All Other.

Line B3E—Other Contracting Actions.

Line B4—Large Business Firms. Enter the total number of actions and total dollar value of actions which were placed with Large Business concerns and the place of performance was in the "United States and Outlying Areas" as defined 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B4A—Small Purchase Procedures.

Line B4B—Delivery Orders—GSA Federal Supply Schedules.

Line B4C—Delivery Orders—Other Federal Supply Schedules.

Line B4D—Delivery Orders—All Other.

Line B4E—Other Contracting Actions.

Line B5—Domestic and Foreign Entities Performing Outside the U.S. and Outlying Areas. Enter the total number of actions and total dollar value of actions which were placed with Domestic and Foreign entities and the place of performance was outside the "United States and Outlying Areas" as defined 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B5A—Small Purchase Procedures.

Line B5B—Delivery Orders—GSA Federal Supply Schedules.

Line B5C—Delivery Orders—Other Federal Supply Schedules.

Line B5D—Delivery Orders—All Other.

Line B5E—Other Contracting Actions.

Line B6—Educational, Nonprofit and Other Entities. Enter the total number of actions and total dollar value of actions which were placed with entities not listed in 204.672-4 such as educational, not for profit and nonprofit institutions and the place of performance was in the "United States and Outlying Areas" as defined 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B6A—Small Purchase Procedures.

Line B6B—Delivery Orders—GSA Federal Supply Schedules.

Line B6C—Delivery Orders—Other Federal Supply Schedules.

Line B6D—Delivery Orders—All Other.

Line B6E—Other Contracting Actions.

Line B7—Total Contracting Actions. Enter the total number of actions and total dollar value of actions reported in lines B1 through B6 above. Do not include the sublines from B3 through B6 in this total line. If directed by agency procedures, also enter the total number and total dollar value of actions corresponding to the following subtotals:

Line B7A—Small Purchase Procedures.

Line B7B—Delivery Orders—GSA Federal Supply Schedules.

Line B7C—Delivery Orders—Other Federal Supply Schedules.

Line B7D—Delivery Orders—All Other.

Line B7E—Other Contracting Actions.

Line B8—Total Modifications Excluding Small Purchase Procedures. Enter the total number of actions and total dollar value of modification actions. This includes modifications to delivery orders and other contract actions which may be included elsewhere in Part B.

(c) Section C. Extent Competed. (Note: Actions reported in Lines B1 and B2 are not reported in Section C.) Enter the total number of actions and total dollar value of actions in the appropriate category below based on the following criteria:

(i) Line C1 "Competed"—Except when the conditions in (ii) below apply, use when any of the following conditions apply:

(A) Actions not subject to CICA (see FAR 6.001) where at least two quotations or offers were received.

(B) Small Business Small Purchase Set-Asides over $1,000.

(C) Competitive procedures were used to fulfill the requirement for full and open competition (FAR 6.1);

(D) Full and open competition was provided for after exclusion of sources, in order to establish/maintain alternative sources or to set aside a procurement for small business or labor surplus area concerns (FAR 6.2);

(E) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (Note: Any procurement authorized or required by statute to be awarded to a specified source, e.g., UNICOR, Sheltered workshops, Government printing or binding, 8(a) awards; brand name commercial products for authorized resale; or awards to regulated monopolies for utilities are excluded from competition and should be reported on Line C2 below);

(F) Contract action resulted from a contract awarded competitively prior to CICA (including two step formal advertising); or

(G) Delivery orders/modifications under a Federal Supply Schedule.

(ii) Line C2 "Not Available For Competition"—Use when any of the following conditions apply to the award:

(NOTE: DoD competition reports also include awards to regulated monopolies, FMS awards/International Agreements and actions with another Agency in the category of "Not Available for Competition", but are not reported in Line C2.)

(A) Brand name commercial products for authorized resale;

(B) Procurements authorized or required by statute to be awarded to a designated source. This includes a contract awarded to the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act (see FAR 19.8);

(C) Awards, or modifications thereto, made pursuant to FAR 13.106(a) Purchases not over $1,000; or

(D) Other contract actions where the Deputy Assistant Secretary of Defense, Procurement (DASD (P)) has determined that there is no opportunity for competition.

(iii) Line C3 "Not Competed"—Complete when Lines C1 or C2 do not apply.

Line C1—Competed, Total. Enter the total number of actions and total dollar value of actions which were competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C1A—Small Business Concerns.

Line C1B—Large Business Concerns.

Line C1C—Domestic or Foreign Entities Performing outside the "United States and Outlying Areas".

Line C1D—Educational, Nonprofit and Other Entities.

Line C2—Not Available for Competition, Total. Enter the total number of actions and total dollar value of actions which were not available for competition. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C2A—Small Business Concerns.

Line C2B—Large Business Concerns.

Line C2C—Domestic or Foreign Entities Performing outside the "United States and Outlying Areas".

Line C2D—Educational, Nonprofit and Other Entities.

Line C3—Not Competed, Total. Enter the total number of actions and total dollar value of actions which were not competed. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line C3A—Small Business Concerns.

Line C3B—Large Business Concerns.

Line C3C—Domestic or Foreign Entities Performing outside the "United States and Outlying Areas".

Line C3D—Educational Institutions, Nonprofit and Other Entities.

(d) Section D, Research, Development, Test and Evaluation Actions. Enter the number and dollar value of actions for research, development, test and evaluation work on the Lines D1 through D5 as appropriate. Do not include purchases of supplies or services that are incidental to the fulfillment of RDT&E work but do not require contractor RDT&E performance.

Line D1—RDT&E Awarded to Small Business Concerns.

Line D2—RDT&E Awarded to Large Business Concerns.

Line D3—RDT&E Awarded to Domestic or Foreign Entities Performing outside the "United States and Outlying Areas".

Line D4—RDT&E Awarded to Historically Black Colleges and Universities or Minority Institutions.

Line D5—RDT&E Awarded to Other Entities. Enter awards to other entities such as educational, nonprofit or not for profit institutions which were not reportable above.

(e) Section E, Selected Socioeconomic Statistics. Enter the total number of actions and total dollar value of actions on the appropriate lines below:

Line E1—Small Business Set-Aside Actions. Enter the total number of actions and total dollar value which were small business set-aside actions. If the action is an emerging small business set-aside, use the most appropriate subline. Also enter the total number and total dollar value of actions corresponding to the following subtotals:

Line E1A—Small Business—Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105.

Line E1B—Small Business Set-Asides. Enter actions pursuant to FAR 19.502, as supplemented.

Line E1C—Combined Small Business/Labor Surplus Area Set-Asides. Enter actions pursuant to 219.502-70.

Line E2—Small Disadvantaged Business Actions. Enter the total number of actions and total dollar value which were small disadvantaged business actions. Also enter the total number of actions and total dollar vlaue associated with each of the SDB categories shown below:

Line E2A—Section 8(a). Enter actions with the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act (FAR 19.8).

Line E2B—SDB Set-Aside or SDB Preference. Enter actions resulting from Total Small Disadvantaged Business Set-aside pursuant to 219.502-72 or actions resulting from application of an SDB evaluation preference (see 219.7002); or SDB preferential consideration (see 219.502-3(S-70)).

Line E2C—Small Business—Small Purchase Set-Aside. Enter actions pursuant to FAR 13.105 where award is to an SDB without the application of a preference.

Line E2D—Small Business Set-Aside. Enter actions pursuant to FAR 19.502, without a preference or preferential consideration to an SDB, but where the award is to an SDB.

Line E2E—Other awards made to SDB concerns.

Line E3—Women-Owned Small Business. Enter total actions and dollars made to Women-owned small businesses.

Line E4—Historically Black Colleges and Universities or Minority Institutions (HBCU/MI). Enter the total actions and dollars made to an HBCU/MI pursuant to 226.7004.

Line E5—Sheltered Workshop. Enter total actions and dollars made to a workshop for the blind or a workshop for the severely handicapped from the procurement list pursuant to FAR 8.7.

Line E6—Labor Surplus Area Set-Aside. Enter total actions and dollars made pursuant to 220.7003 or FAR 20.2. Do not include awards reported in Line E2C as a combined small business/labor surplus area set-aside.

(f) Section F—Small Purchase Procedures—Dollar Value Ranges. Enter the total number of small purchase procedure actions and total dollar value in the appropriate category shown below.

Line F1—$0.01-1,000.00.

Line F2—$1,000.01-2,500.00.

Line F3—$2,500.01-10,000.00.

Line F4—$10,000.01-25,000.00.

(g) Section G—Remarks and Authentications.

Line G1—Remarks. Enter any remarks applicable to this report.

Line G2—Contracting Officer.

Line G2A—Contracting Officer's Name. Enter the typed name (Last, First, Middle Initial) of the contracting officer or duly authorized representative.

Line G2B—Contracting Officer's Signature. Enter the signature of the person identified in line G2A above.

Line G2C—Telephone Number. Enter the telephone number (and area code) of the person identified in line G2A above.

Line G3—Date Report Submitted. Enter the date submitted as year, month and day in 2-digit numeric segments (YYMMDD). For example, enter 2 January 1999 as 990102.

[53 FR 34091, Sept. 2, 1988; 53 FR 50414, Dec. 15, 1988; 54 FR 4247, Jan. 27, 1989; 54 FR 5485, Feb. 3, 1989; 54 FR 16115, Apr. 21, 1989; 54 FR 26205, June 22, 1989]

EDITORIAL NOTE: At 54 FR 28422, July 6, 1989, the Department of Defense published a document in the Federal Register, attempting to amend section 204.672-5. However, because of inaccurate amendatory language, this amendment could not be incorporated. For the convenience of the user, the language at 54 FR 28422 is set forth as follows:

3. Section 204.672-5 is amended by revising paragraphs (b) and (c) to read as follows:

204.672-5 Instructions for Completion of the DD Form 1057.

* * * * *

(b) *Section B, Contracting Actions.*

(i) The entries for Lines B1 through B7E include new awards and modifications.

(ii) For Lines B3 through B6, enter the total number of actions and total dollar value of actions and also complete each subcategory shown.

(iii) Actions placed with another Federal Agency or Government Corporation, including actions with Federal Prison Industries pursuant to FAR 8.6 shall be reported in Lines B2 and B2B.

(iv) Actions with workshops for the blind or other severely handicapped including orders with workshops from the procurement list shall be reported in Line B6 and Subline B6E.

Line B1—Tariff or Regulated Acquisitions Total. Enter on Line B1 the number and dollar value of actions reportable as tariff or regulated industry actions (sole source and service rates are fixed or adjusted by a Federal, State or other public regulatory body).

Line B2—Contract for Foreign Government or International Organization or with a Federal Agency or Government Corporation. Enter the total number of actions and total dollar value of actions where the foreign government or international organization bears any part of the cost of the action. Report any actions placed directly with a foreign government on this line, e.g., base maintenance performed with the foreign government acting as the contractor. Report any actions placed directly with another Federal Agency or Government Corporation on this line. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

Line B2A—Actions with a Foreign Government or International Organization.

Line B2B—Actions with Another Federal Agency or Government Corporation.

* * * * *

Line B6—Educational, Nonprofit and Other Entities. Enter the total number of actions and total dollar value of actions which were placed with entities not listed in Lines B1 through B5 above. Use this line to report actions with educational institutions, organizations for the blind and other severely handicapped, not-for-profit and nonprofit institutions, and actions where the place of performance was in the "United States and Outlying Areas" as defined in 204.672-4. Also enter the total number of actions and total dollar value of actions corresponding to the following subtotals:

* * * * *

(c) *Section C, Extent Competed.* * * *

(1) *Line C1—Competed.* Except when the conditions in Line C2 below apply, use when any of the following conditions apply:

* * * * *

(v) Statutory authorities for other than full and open competition were used (FAR 6.3) and more than one offer was received (Note: Acquisitions pursuant to FAR 6.302-5, Authorized or required by statute, are excluded from Line C1 and addressed in the instructions for Line C2 below);

(vi) Contract action resulted from a contract awarded competitively prior to CICA (including two-step formal advertising);

(vii) Delivery orders/modifications under a Federal Supply Schedule; or

(viii) Section 8(a) awards competed pursuant to FAR Subpart 6.2.

(2) *Line C2—Not Available For Competition.* Use when any of the following conditions apply to the award: (Note: Awards to regulated monopolies, FMS awards/International Agreements, and actions with another Federal Agency or Government Corporation are not entered in Line C2. These actions are treated as not available for competition in published competition reports but are not reported in Line C2.)

(i) Brand name commercial products for authorized resale;

(ii) Any acquisition authorized or required by statute to be awarded to a specific source or through another agency pursuant to FAR 6.302-5(b) (2) or (4). This includes qualified nonprofit agencies for the blind or other severely handicapped, and 8(a) programs not reportable on Line C1 above;

* * * * *

(3) *Line C3—Not Competed.* Complete when Lines C1 or C2 do not apply.

* * * * *

204.672-6 Instructions for preparing magnetic tape of DD Form 1057 actions, DD-P&L(M) 1015.

A magnetic tape as prescribed by the Office of the Deputy Assistant Secretary of Defense for Procurement will be submitted to DIOR-WHS by the Departments to cover DD Form 1057 transactions for each month (noncumulative). The instructions for preparing the magnetic tape are developed by DIOR-WHS with the agreement of the Departments.

[53 FR 34091, Sept. 2, 1988; 53 FR 50414, Dec. 15, 1988]

204.673 Record of weighted guidelines method application (DD Form 1547).

204.673-1 Purpose.

The DD Form 1547 is the principal source document for maintaining a DoD-wide management information system on profit and fee statistics, as required under DoD Instruction 7730.27, "Reporting of Planned and Negotiated Contract Profit Rates" (see 215.970). The management information system is extensively used within the Office of the Secretary of Defense to serve a wide variety of purposes ranging from evaluating profit and fee policies to responding to information requests received from all branches of the Government, Congress, and the public.

[53 FR 50414, Dec. 15, 1988]

204.673-2 Responsibilities.

The Heads of the Military Departments shall develop the necessary policies, procedures, and internal controls for implementing this reporting system. The contracting officer is responsible for properly preparing the DD Form 1547 and forwarding a copy of it to the designated office within 30 calendar days after the date of contract award. The contracting officer is also responsible for the correction of any errors detected by the system's auditing processes.

[53 FR 50414, Dec. 15, 1988]

204.673-3 Applicability.

For the field contracting offices specified below, a copy of the completed DD Form 1547 shall be forwarded to the office designated for all contract actions valued $500,000 or more where the contracting officer employed either the Weighted Guidelines Method (215.970), an alternate structured approach (215.971), or the Modified Weighted Guidelines Method (215.972). Offices located outside the United States, its possessions, and Puerto Rico are exempt from this reporting requirement.

(a) *Army.* Contracting officers from all field contracting offices shall forward completed DD Forms 1547 directly to the Office of the Assistant Secretary for Research, Development and Acquisition (SARD-KS), Washington, DC 20310-0600 or through intermediate office shown below:

(1) For Army Materiel Command field contracting offices, send through Army Materiel Command, ATTN: AMCPP-SC, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001; and

(2) For U.S. Army Corps of Engineers contracting offices, send through Office of the Chief of Engineers, HQDA (DAEN-PRP), Washington, DC 20314-1000.

(b) *Navy.* (1) Contracting officers from the contracting offices specified below and all subordinate field offices shall forward completed DD Forms 1547 to the office designated in paragraph (b)(2) of this section:

(i) Naval Air Systems Command;

(ii) Naval Sea Systems Command;

(iii) Space and Naval Warfare Systems Command;

(iv) Naval Facilities Engineering Command;

(v) Naval Supply Systems Command;

(vi) Office of Naval Research;

(vii) Headquarters, United States Marine Corps; and

(viii) Strategic Systems Project Office.

(2) Designated Office: Commander, Naval Supply Systems Command (SUP 024B), Washington, DC 20376.

(c) *Air Force.* (1) Contracting officers from all field contracting offices in the Air Force Systems Command and Air Force Logistics Command shall forward completed DD Forms 1547 to HQ AFLC/LMSC/SORS, Wright-Patterson Air Force Base, Ohio 45433.

[53 FR 50414, Dec. 15, 1988]

204.673-4 Procedures.

(a) All elements of the DD Form 1547 shall be completed by the contracting officer as instructed in 215.970-2, 215.971-3, and 215.972-2.

(b) Completed forms shall be sent to the designated office, as an unclassified document, within 30 days after contract award. Classified information shall not be entered into the management information system on profit. The designated office will perform the necessary audit tests to ensure that the information on the DD Form 1547 is accurate. Use of mechanized or automated systems is desirable.

(c) The designated offices shall transmit the DD Form 1547 information in the manner and format specified in DoD Instruction 7730.27.

(d) The reporting requirements of this part have been assigned RCS: P&L(Q) 1751.

[53 FR 50414, Dec. 15, 1988]

204.674 Overseas distribution of defense subcontracts (DD Form 2139).

204.674-1 Definition.

Country of Origin, as used in this section, means the country where the actual producer of supplies or provider of services is located.

204.674-2 Purpose.

To assist DoD monitoring of the volume, type, and nature of subcontracts with foreign sources the clause at 252.204-7005 requires prime contractors and first tier subcontractors to report (using DD Form 2139) those subcontracts or modifications thereof exceeding $25,000 where the country of origin is outside the United States, its territories and possessions.

204.674-3 Contract clause.

The contracting officer shall insert the clause at 252.204-7005, Overseas Distribution of Defense Subcontracts, in any contract for other than Commercial items which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to the modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

204.675 Individual Contract Reporting of Actions $25,000 or Less in the Four Designated Industry Groups Under the Small Business Competitiveness Demonstration Program.

204.675-1 General.

The four designated industry groups in the Small Business Competitiveness Demonstration Program are set forth in FAR 19.1005(a). For the procurement of a service in any of the four designated industry groups (for Army, includes dredging), the Small Business Competitiveness Demonstration Act of 1988, Pub. L. 100-656, requires reporting of each award of $25,000 or less in the same manner as if the purchase were in excess of $25,000.

[54 FR 4247, Jan. 27, 1989 and 54 FR 26205, June 22, 1989]

204.675-2 Procedures.

(a) During the term of the Program, each contracting action obligating or deobligating $25,000 or less for services within any of the four designated industry groups shall be reported on an Individual Contract Action Report (DD Form 350) except as indicated in 204.671-3(e), and except that a DD Form 350 need not be prepared for actions of $500 or less. In addition, do not complete the report for actions of $25,000 or less when the action is a result of a Foreign Military Sale (Item B9=Y) or the kind of contracting action would be coded as an order/modification under Federal Schedule or as an action with another Federal Agency (Item B14=6 or 8).

(b) This requirement is in addition to the reporting requirement at 204.672, Monthly Contracting Summary of Actions $25,000 or Less (DD Form 1057).

[54 FR 4247, Jan. 27, 1989 and 54 FR 26205, June 22, 1989, as amended at 54 FR 28422, July 6, 1989; 55 FR 19076, May 8, 1990]

204.675-3 Instructions for Completion of the DD Form 350.

Do not complete the report for actions of $25,000 or less when the action is a result of a Foreign Military Sale (Item B9=Y) or when the kind of contracting action would be coded as an order/modification under Federal

Schedule or as an action with another Federal Agency (Item B13=6 or 8).

(a) Except as noted in (b) and (c) below, complete the DD Form 350 in accordance with the instructions at 204.671-5.

(b) Leave Items B4, B5B, B5E, B5F, B5G, B10, B11, B12B, B12C, C4, C6, C11, C12, D2, D3, D4E, D5, D7, D8, and E1 blank. Leave Items C-8 and C-9 blank when small purchase procedures are used.

(c) Contracting actions using small purchase procedures shall code the following items as shown below. (These codes do not appear on the DD Form 350).

Item B13, Kind of Contract Action

Code 9—Small Purchase Procedures. Enter this code to report an action using small purchase procedures as defined in FAR Part 13.

Item D4A, Type of Small Business Set-Aside

Code Y—Enter this code if the action resulted from an Emerging Small Business Set-Aside (219.1070-2).

Code Z—Small Business-Small Purchase Set-Aside. Enter this code if the acquisition was reserved exclusively for small business concerns pursuant to FAR 13.105.

[54 FR 4247, Jan. 27, 1989; 54 FR 5484, Feb. 3, 1989; 54 FR 26205, June 22, 1989, as amended at 54 FR 28422, July 6, 1989]

Subpart 204.8—Contract Files

204.801 General.

(c)(S-70) *Contract cross reference/locator file.* This file consists of Contract Cross Reference Data Forms (DD Forms 1592) maintained as prescribed in 204.802-73.

[51 FR 46074, Dec. 23, 1986, as amended at 53 FR 38179, Sept. 29, 1988]

204.802 Contract files.

(a)(1) Authenticated or conformed copies of contractual instruments and signed or official record copies of correspondence, memoranda, and other documents shall be used in compiling the official files. Authenticated copies are documents shown to be genuine by certification as a true copy by signature of an authorized person or by official seal. Except to the extent that contract clauses or specifications are incorporated by reference, conformed copies are complete and accurate copies of the contractual instrument, including the date of execution and the names and titles of signatories. Documents reproduced by fast-copy process that deteriorates when exposed to excessive heat or light shall not be included in the official file.

(c)(4) When the bulk of the material is unclassified, classified material relating to the same contract shall be maintained in a separate file folder and container, and the unclassified folder marked or cross-referenced to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any of the documents in the folder.

204.802-70 Use of standard file folders for drawer and shelf filing.

(a) For all short duration contracts and for small purchase files, standard letter-size folders shall be used. For complex long-duration high-dollar value contracts, heavy individual or 6-part partitioned folders, with front and back flaps, two dividers, expansion gussets between flaps and dividers, and fasteners mounted at the top of the insides of the flaps and on each side of the dividers, may be used.

(b) Loose dividers (file inserts), prepunched at the top for fastening documents, may be used for subdividing material within the same folder when special folders are not used.

204.802-71 Filing of documents.

(a) Documents relating to a specific contract and described in FAR 4.803 (a), (b) and (c) should normally be placed in chronological order in an "OFFICIAL FILE" folder or folders. Each folder shall be marked or labeled with the procurement instrument identification number and, when more than one folder is required for the same contract, with information as to the file segment. Other identifying data, such as the contractor's name, should be added only when needed to facilitate filing and locating.

(1) A separate folder need not be established for each subcontract, mechanized small purchase, or small dollar value contract, on which little or no administration is required; these should be filed in numerical sequence within the same folder.

(2) When a single folder is used, basic procurement documents and all modifications ordinarily should be filed on the left side of the folder and all other material on the right side. As volume warrants, a contract file may be subdivided further, either within the folder or by using additional folders, as appropriate. The following are examples:

(i) For the purchasing office, by precontract documents, basic contract, contract modifications, termination documents, general correspondence, and other; and

(ii) For the contract administration office, by basic contract, contract modifications, quality assurance and progressing and production surveillance, property administration and plant clearance, termination documents, and general correspondence. Documents shall be arranged chronologically within each section or folder.

(3) When it is impractical to file certain documents in the official case folder because of their bulk or use, they may be maintained separately in other suitable containers, but they shall be handled as "OFFICIAL FILES" and cross-referenced in the contract case file.

(4) Documents relating to two or more contracts may be filed in one contract file and cross-referenced in the others, or enough copies reproduced to provide for filing one in each related contract file. Other pertinent documents of a more general nature may be filed separately in the contractor general file and cross-referenced in the contract file.

(b) Documents described in 204.801(c)(3) and relating generally to the contractor rather than to a specific contract shall be placed in a folder labeled with the contractor's name. When necessary, additional folders may be used and the material subdivided by subject, such as general, production, termination, property control, and performance.

204.802-72 Arrangement of files.

(a) Contract file folders normally should be arranged numerically by contract serial number. Under the Department of Defense uniform procurement instrument identification numbering system (see 204.70), the 10th through the 13th digits are the serial number. Large numbers of contract files (10,000 or more) are best arranged by the terminal digit filing method, using the four-digit serial number. When special circumstances warrant, contract folders may be arranged alphabetically by contractor's name, by commodity, or by type of contract, and thereunder numerically.

(b) Contractor general file folders shall be arranged alphabetically by name of the contractor.

204.802-73 Contract cross reference/locator system.

(a) Contract administration offices shall maintain a contract cross reference/locator system, manual or mechanized as appropriate. For a manual system, Contract Cross Reference Data (DD Form 1592), which is a two-part carbon interleaved form, shall be used as follows:

(1) For a prime contract, one set shall be prepared, the original filed alphabetically by contractor's name, and the duplicate filed numerically by contract number, using the terminal digit filing method when contract files are so maintained;

(2) For a subcontract, two sets shall be prepared, one set filed as in (1) above, and the other set filed by subcontractor's name and subcontract number;

(3) Additional information as necessary shall be included under "Remarks," such as dollar value, contract type, brief description of item or service, special or limited administration requirements, secondary inspection office, and security classification.

(b) Offices, other than contract administration offices, which require a contract cross-reference/locator system to meet reference requirements or other special needs also shall use the system prescribed in (a) above.

204.803 Contents of contract files.

(a) *Contracting office contract file.*

(a)(23) Exceptions or exemptions from the Buy American Act or appropriations act restrictions.

(a)(37) When applicable, a Contract Completion Statement (DD Form 1594) shall be included.

(a)(38) Termination documents include—

(i) Recommendation or request to terminate together with reason for terminating, and, in the case of major contracts, plans therefor.

(ii) Review board actions accomplished by the purchasing office.

(iii) Copy of termination notice.

(iv) Documents supporting termination actions taken when terminated for default, such as notice of possible termination, show cause letter and reply, and record of conferences, if any.

(v) Record of repurchase, including written demand to contractor for excess costs.

(a)(S-70) *Verification of requirements.*

(b) *Contract administration office contract file.* The extent to which the following list shall apply depends upon the type of contract, dollar value, and functions assigned to the contract administration office.

(b)(3) This includes the Contract Security Classification Specification (DD Form 254).

(b)(14) Progressing, expediting, and production surveillance records (these are to be maintained separately to facilitate their early disposal as prescribed in FAR 4.805(g)). They include such records as—

(i) Production plans and delivery schedules.

(ii) Progress or status reports.

(iii) Advice of delays or delinquencies, and of corrective and production follow-up actions.

(iv) Documents reflecting deliveries or production completion.

(b)(15) Quality assurance/control (inspection) records used in planning, conducting, and recording product verifications, testing, reviewing quality programs and plans, evaluating procedures and processes or technical performance, and effecting corrective actions, where required (these records are to be maintained separately for earlier disposal); they include:

(i) Quality assurance records, such as:

(A) Reference to Contractor's Quality Program document, and disapproval, if any.

(B) Subcontract inspection control records (request for source inspection, and waiver of usual inspection procedure).

(C) Inspection requests, agreements, and assignments.

(D) Requests for waivers and deviations, and copy of approvals or disapprovals, if any (including Material Review Board decisions).

(E) Required inspection and test reports.

(ii) Quality control (inspection) records, such as:

(A) Quality program review reports (procedures and processes evaluation, periodic quality assurance survey).

(B) Government inspection and test reports.

(C) Authority to ship and acceptance documents (e.g., DD Form 1384, Transportation Control and Movement Document; DD Form 250, Material Inspection and Receiving Report; DD Form 1155, Order for Supplies or Services/Request for Quotations); routing requests and orders, and shipment copies of bills of lading (DD Form 250 may be excluded when maintained in paying office file and paying office is located at the contract administration office).

(D) Reports of unsatisfactory material and corrective actions, and reports of damaged or improper shipments.

(E) Other papers necessary to document the quality control or inspection function.

(b)(16) Property administration records used in the administration of Government property provisions of the contract (these are to be maintained separately for disposition). These include—

(i) Contract number, type of contract, and contractor name and address.

(ii) Name and dates of tenure of administrative contracting officer(s) and property administrator(s).

(iii) End item(s) and points of inspection and acceptance.

(iv) Record of contract clauses, amendments and changes pertaining to Government property.

(v) Record of contract clauses pertaining to contractor's liability.

(vi) Record of written approval of contractor's property control system or withdrawal of approval and cause, dates system approval reinstated, and deviations granted.

(vii) Listing and type of subcontracts which involve Government property or reference to location of such information.

(viii) Record of secondary administration assignments.

(ix) Record of system surveys performed, deficiencies found and corrective action taken.

(x) Record of property audits and inspections.

(xi) Record of findings and determination that inventory adjustments are reasonable.

(xii) Records of investigation and recommendations of the property administrator, and written advice of the administrative contracting officer on cases involving contractor's liability for Government property lost, damaged, destroyed, or consumed in unreasonable quantities.

(xiii) Original of final property administration clearance statement executed by the property administrator or other relief from assignment documentation.

(xiv) Reports relating to Government property.

(xv) Correspondence, messages, memoranda of calls and visits, and any additional documents pertinent to Government property.

(b)(17) Documentation regarding termination actions for which the contract administration office is responsible, including, as appropriate—

(i) Termination authority and instructions.

(ii) Copy of termination notice.

(iii) Record of initial meeting with contractor.

(iv) Contractor's request, and approval thereof if other than inventory basis is to be used.

(v) Settlement Proposal.

(vi) Application for Partial Payment and approval thereof, together with record of security required.

(vii) Record of the examination of prime contractor and subcontractor proposals, including engineering analysis, audit report or waiver, and request therefor.

(viii) Request to plant clearance office for action on inventory schedules.

(ix) Request from prime contractor for authority to settle subcontractor proposals without approval or ratification of contracting officer, and actions thereon.

(x) Recommendations by prime contractor covering subcontractor's proposal.

(xi) Approval of subcontractor's proposed settlements.

(xii) Record of plant clearance actions, such as verification of and determination of allocability and allowability of inventory schedules, record of inventory redistribution and disposal actions including diversion, screening, scrap determination, sale, abandonment, donation, and storage, as appropriate.

(xiii) Contracting officer's negotiations memorandum (presentation to Settlement Review Board).

(xiv) Required approvals by Settlement Review Board or others.

(xv) Settlement agreement, including record of any exceptions and, when agreement was not reached, a copy of determination by the contracting officer and written supporting evidence.

(xvi) Documents supporting termination actions taken when termination for default, such as notice of possible termination, copy of show cause letter and reply, and record of conference.

(b)(20) When applicable, this includes the Contract Completion Statement (DD Form 1594).

(c) *Paying office contract file.*

(2) Supporting documents may include:

(i) Shipment, acceptance, or receiving reports, such as DD Forms 250 and 1155 (NOTE.—File DD Forms 250 and

1155 as a separate file series when it will facilitate compilation of contract status and statistical reports), and

(ii) Authorizations for advance and progress payments.

[51 FR 46074, Dec. 23, 1986, as amended at 53 FR 38179, Sept. 29, 1988]

204.804-1 Closeout by the office administering the contract.

(a)(S-70) *Closed Contracts.* Firm Fixed Price Unilateral Purchase Orders are closed when evidence of physical completion is received by the PCO. All other contracts are closed when they are physically complete and when all administrative actions are taken, including the accomplishment of one of the two Contract Completion Statements, DD Form 1594 or MILSCAP Format Identifier PK9.

(a)(S-71) Time standards established in FAR 4.804-1(a) are based upon the time required for closing the majority of contracts. It is recognized that delays beyond the above standards may occur (such as in the case of terminations). Where delays occur, contracts shall be reported in accordance with 204.804-4.

204.804-4 Physically completed contracts.

(a) (S-70) *Interim Contract Completion Statement (Notice of Physical Completion).* This notice will be used when the contract is administered by an office other than the purchasing office. When a contract, other than a small purchase, is physically completed and accepted, the Contract Administration Office (CAO) with primary contract administration responsibility will forward a DD Form 1594, Contract Completion Statement, or a MILSCAP Format Identifier Interim PK9 (Contract Physical Completion), to the purchasing office. When the DD Form 1594 is used as a notification of physical completion, Block 8, Remarks, will be annotated "Notice of Physical Completion". Block 8 will also contain the final acceptance date and the typed name and signature of a responsible official, and the date signed. Blocks 9b, 9c, and 9d of the DD Form 1594 will be left blank. This notification will be used to begin the contract closeout procedures specified in FAR 4.804-5.

(b) Status of Physically Completed Unclosed Contracts. Contract Administration Offices shall advise the appropriate procuring contracting officers within 15 days after the end of the month following the month in which a physically completed contract has not been closed within the time periods specified in FAR 4.804-1. This advice shall include the reasons for the delay, and the target date which has been set for closing. If the contract is not closed by the target date specified, the contract administration office shall, unless information is requested earlier by the PCO, advise the PCO of the reasons for the further delay and the new target date. MILSCAP Format Identifier PKX, Unclosed Contract Status, shall be used to provide this advice to the PCO when MILSCAP procedures apply.

[51 FR 46074, Dec. 23, 1986, as amended at 54 FR 16115, Apr. 21, 1989]

204.804-5 Detailed procedures for closing out contract files.

(a) (S-70) *When purchasing office administers the contract.* When the purchasing office administers a contract, that office is responsible for insuring that all required purchase actions and contract administration have been completed, utilizing as necessary DD Form 1597, Contract Closeout Check-List, and DD Form 1593, Contract Administration Completion Record. When all required actions have been completed, the purchasing office shall prepare DD Form 1594, Contract Completion Statement, for all contracts in excess of the small purchase threshold (see FAR 13.000). The Contract Completion Statement shall be made a part of the official contract file. For all contracts not in excess of the small purchase threshold, the contracting officer shall include in the contract file a statement that all contract actions have been completed. The completed form or statement is authority for closing out of the contract file. The file shall be closed out as provided in 204.804-70(a)(2).

(a)(S-71) *When purchasing office does not administer the contract.* When the purchasing office does not administer a contract, that office, upon receipt of DD Form 1594, or MILSCAP Format Identifier PK9, Contract Completion Statement, from the Contract Administration Office (see 204.804-5(b)(3)) shall insure that all actions required of the Purchasing Office have been completed, shall then complete Item 10 of the DD Form 1594, or where the MILSCAP PK9 is used, prepare a statement that all contract actions have been completed, and shall make the completed form or statement a part of the official contract file. The completed form or statement is authority for closing out the purchasing office contract file. Closeout of the file shall be effected as provided in 204.804-70(a)(2). The date in Item 9d of DD Form 1594, or Columns 59-65 of the MILSCAP Format Identifier PK9, Contract Completion Statement, shall be used as the closeout date for file purposes, except that the date in Item 10e of DD Form 1594 or the date of the closeout statement when the MILSCAP PK9 is received shall be used when completion of any pending significant purchasing office action extends more than three months beyond the date shown in Item 9d of DD Form 1594 or Columns 59-65 of the MILSCAP PK9. In the latter case, the purchasing office shall advise the contract administration office of the revised closeout date by sending a reproduced copy of the completed DD Form 1594, or by preparation of MILSCAP Format Identifier PKZ, Contract Closeout Extension.

(b) With respect to all contracts which the contract administration office administers, that office is responsible for insuring that all contract administration has been completed and for initiating closeout action. The organizational element to which this responsibility is assigned shall proceed as follows upon determination or advice (such as by final DD Form 250 or other final report) that the contract has been fully performed or has been terminated completely:

(1) Provide the purchasing office with an interim contract completion statement (See 204.804-5(a)(S-70)). Upon receipt of the notice of physical completion, the PCO should inform the ACO of any impending actions which may cause delays in the closeout procedures.

(2) Prepare DD Form 1597, Contract Closeout Check List, when necessary to determine that all required actions have been accomplished.

(3) If appropriate, initiate DD Form 1593, Contract Administration Completion Record, to obtain statements from other organizational elements certifying completion of actions required of each (normally a single copy should be routed in turn to offices concerned, but separate forms may be routed when necessary, such as when closeout actions may be complex and extensive or when offices are at different locations).

(4) Upon determination of final completion (including final payment), process MILSCAP Format Identifier PK9 or complete Items 1 through 9 of DD Form 1594 certifying that all contract administration office actions have been fully and satisfactorily accomplished, and forward the original of the form to the purchasing office (which will utilize it to close out its contract file).

(5) Retain one copy of the completed form, which is authority for closing out the contract administration file.

[51 FR 46074, Dec. 23, 1986, as amended at 54 FR 16115, Apr. 21, 1989; 54 FR 46901, Nov. 8, 1989]

204.804-70 Review, separation, and retirement of completed contract files.

(a) Upon determination of contract completion under the procedures outlined in FAR 4.804 and 204.804 above, each office shall review all files pertaining to the individual contract as described below. For disposal criteria, see FAR 4.805.

(1) *Duplicate or working contract case file*—remove any original or official file copies of documents and place them in the appropriate "official" file; destroy immediately any remaining material, or segregate and mark it for early disposal.

(2) *Official contract case file*—remove folder for completed contract from the active file series, mark each folder or folder tab "Completed (*Date*)" and place them in completed (inactive) cross-reference/locator file

series; separate series should be established for contracts under the small purchase threshold (see FAR 13.000) to facilitate later disposal.

(3) *Cross reference/locater files*—remove any contract cross-reference data forms relating to the completed contract, mark each "Completed (*Date*)" and place them in completed (inactive) cross reference/locater file series for later disposal.

(b) *Review of contractor general files.* Each office shall review contractor general files at least once annually and—

(1) Remove obsolete and superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of contractor's current or future capability, performance, or programs, and documents relating to a contractor who is no longer a possible source of supplies, services, or technical assistance) and dispose as authorized.

(2) Remove any documents pertaining only to completed contracts, place those not routine in nature in inactive contractor file for later disposal and immediately dispose of routine documents as authorized.

(c) *Retirement of completed files.* Completed files series shall be cut off at least annually, and new series begun to facilitate destruction in blocks—normally annual blocks. The cut-off series shall be held in the office maintaining the records for an additional period not to exceed one year and then stored locally in record-holding or staging areas, if available, until they are eligible for destruction (see FAR 4.805); when such space is not available, the files shall then be transferred to the General Services Administration Federal Records Center servicing the area. Completed cross reference/locator files shall be held locally until eligible for destruction.

[51 FR 46074, Dec. 23, 1986, as amended at 54 FR 16116, Apr. 21, 1989]

204.805-70 Disposal of duplicate or working contract or contractor files.

Duplicate copies of official file documents and extraneous materials not required or appropriate for filing in official files shall be destroyed as soon as they have served their purpose, when actions which the file facilitated have been taken, or upon physical completion or final payment under the contract, as appropriate. In no case shall such copies be retained for longer than one year after final payment under the contract. However, pricing review files containing documents related to reviews of contractor price proposals, subject to certification of cost or pricing data (see FAR 15.804-2), shall not be destroyed before the expiration of 6 years from the date of final payment under the contract. If conditions exist, however, which do not permit cross-referencing the pricing review file to the official contract file to determine the date of final payment, the pricing review file will, in that case, be retained for 9 years following completion of the proposal review.

204.805-71 Disposal of contract cross reference/locator files.

Completed contract cross reference/locator files shall be destroyed at the same time as the related contract file, or when they are no longer required as contract cross-reference/locator.

Subpart 204.9—Information Reporting to the IRS

204.903 Procedures.

(S-70) For DoD, the information needed to meet the reporting requirements set forth will be reported using the DD Form 350, Individual Contract Action Report (over $25,000) in accordance with instructions in subpart 204.6.

[53 FR 43205, Oct. 26, 1989]

Subpart 204.70—Uniform Procurement Instrument Identification Numbers

204.7001 Scope.

This subpart prescribes procedures for assigning identifying numbers to all contracts and to other instruments related thereto, including solicitation documents and delivery orders, issued pursuant to this supplement. This subpart does not apply to procurement instruments issued by the Defense Commercial Communications Office, Defense Communications Agency. The provisions of this subpart are optional where the procurement instrument will be completely administered by the purchasing office or the consignee, except that as a minimum such instrument numbers shall not exceed 19 characters (excluding hyphens) for the procurement instrument identification number including any supplemental modification or other identification number, and such instrument numbers shall commence with the identification of the purchasing office and the fiscal year, in accordance with 204.7003-2 (a) and (b) and appendix N.

204.7002 Policy.

(a) The uniform procurement instrument identification (hereafter referred to as PII) numbering system as prescribed in this subpart shall be used for instruments of the types listed in 204.7003-1(c), 204.7004-2, 204.7004-3, and 204.7004-4.

(b) Numbers, including Federal Supply Contract Numbers and any prescribed supplementary numbers, shall be placed in spaces provided on the applicable procurement forms, with major elements separated by dashes; for example, DABE01-66-M-0001. If a space is not otherwise provided, the prescribed numbers shall be placed in the upper righthand corner of the form.

(c) Alpha-numeric characters, other than those prescribed in this subpart, shall not be used as a part of the PII numbering system. If other identification is required in accordance with Departmental procedures, it shall be placed on the procurement instrument in such a location as to clearly separate it from the PII number prescribed herein.

204.7003 Basic procurement instrument identification number.

204.7003-1 Elements of number.

The basic PII number should be retained unchanged for the life of the particular instrument and shall consist of 13 alpha-numeric characters positioned as follows:

(a) The first 6 positions shall commence with the capital letters assigned to the Department preparing the instrument as follows:

DA	Department of the Army
F	Department of the Air Force
DCA	Defense Communications Agency
N	Department of the Navy (except Marine Corps)
MO, M1	Marine Corps
M2, M6:	
DLA	Defense Logistics Agency
DNA	Defense Nuclear Agency
DMA	Defense Mapping Agency
MDA	Miscellaneous Defense Activities

The remainder of the first 6 positions shall be the alpha-numeric characters which, together with the Departmental identification shown above, identify the activity preparing the instrument. All 6 positions shall be used. If necessary, nonsignificant zeros shall be placed between the Department identifier and the activity identifier. A listing of applicable numbers is contained in appendix N.

(b) The 7th and 8th positions shall be the last two digits of the fiscal year in which the PII number is assigned.

(c) The 9th position shall be a capital letter assigned to indicate the type of instrument code, as follows:

A	Blanket Purchase Agreements
B	Invitation for Bid
C	Contracts, including Letter Contracts, contracts incorporating basic agreements, and contracts providing subsequent provisioning, but excluding Indefinite Delivery Type Contracts
D	Indefinite Delivery Type Contracts
E	Facilities Contract
F	Delivery orders placed with or through other Government Departments or agencies or against contracts placed by such Departments or agencies (i.e., outside the Department of Defense and including blind-made supplies)
G	Basic Ordering Agreements
H	Agreements, including Basic Agreements
K	Short Form Research Contract
L	Lease Agreement
M	Purchase Order—manual (assign W when numbering capability of M becomes exhausted during a fiscal year
N	Notice of Intent to Purchase
P	Purchase Order—automated (assign V when numbering capability of P becomes exhausted during a fiscal year)
Q	Request for Quotation—manual
R	Request for Proposal
S	Sales Contract

T Request for Quotation—automated (assign U when numbering capability of T becomes exhausted during a fiscal year).

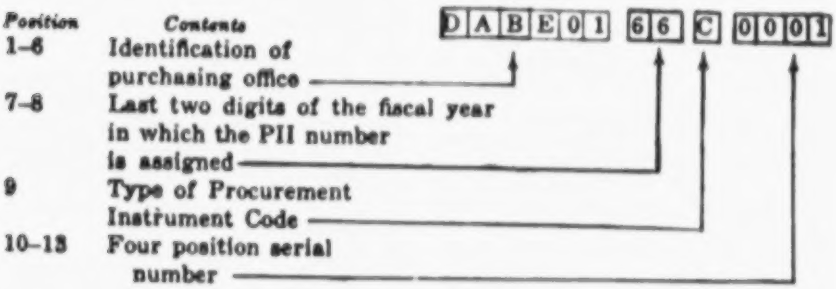
The letters X, Y and Z are reserved for Departmental use.

(d) The 10th through 13th positions shall be the serial number of the instrument. A separate series of serial numbers may be used for any type of instrument listed in (c) above. Each such series of PII numbers for the same activity shall commence with the number 0001 at the start of each fiscal year. Alpha-numeric serial numbers shall be used when more than 9,999 numbers are required. Alpha-numeric numbers shall be serially assigned with an alpha in the first (or first and second) position followed by the three (or two) position numeric serial number. The following alpha-numeric sequence shall be used (the letters I and O shall not be used):

A001 through A999, B001 through B999, and so on to Z001 through Z999;
then AA01 through AA99, AB01 through AB99, and so on to AZ01 through, AZ99;
then BA01 through BA99, BB01 through BB99, and so on to BZ01 through BZ99;
and so on to
ZA01 through ZA99, ZB01 through ZB99, and so on to Z001 through ZZ99.

204.7003-2 Illustration of number.

The following illustrates the configuration of the PII number as prescribed in 204.7003.



Position	*Contents*
1–6	**Identification of purchasing office**
7–8	**Last two digits of the fiscal year in which the PII number is assigned**
9	**Type of Procurement Instrument Code**
10–13	**Four position serial number**

204.7004 Supplementary procurement instrument identification numbers.

204.7004-1 Uses of the number.

Supplementary numbers, used in conjunction with basic PII numbers, shall be employed to identify:

(a) Amendments to solicitation documents;

(b) Modifications of contracts and agreements (Provisioned Item Orders will be treated and numbered as modifications); and

(c) Calls/orders under contracts (except Federal Supply Schedule contracts), under basic ordering agreements and under blanket purchase agreements.

204.7004-2 Amendments to solicitation documents.

Amendments to each solicitation document shall be sequentially numbered by use of a four position numeric serial number supplementary to the basic PII number, commencing with 0001.

204.7004-3 Modifications of contracts and agreements.

(a) Contract modifications, as defined in FAR Subpart 43.1, and modifications to agreements shall be numbered by use of a six-position alpha-numeric number supplementary to the 13-position basic PII number as follows:

(1) The first position shall be a capital letter identifying the issuing office and the type of modification as indicated below:

A Contract Administration Office modifications
P Purchasing Office modifications

(2) The second through sixth positions shall be a serial number. The second and third positions may be alpha or numeric, except that the letters K, L, M, N, P, S, T, U, V, W, X, Y and Z are excluded and reserved for the express purposes as follows:

(i) For a definitized letter contract the second position shall be a Z; in other words, the letter Z will be used only for that modification which represents the definitized contract. The serial numbers of modifications occurring after the definitization will continue the sequence in the manner provided in this paragraph, without the letter Z.

(ii) Only the letters T, U, V, W, X, or Y may be used in the second position when a modification is issued providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the contract provides delivery FOB origin and no price change is involved. Modifications shall be serially numbered by each issuing activity. The foregoing is not mandatory on purchase offices that issue and control all modifications.

(iii) The letter S only may be used in the second position when a modification is issued providing initial or amended shipping instructions in those cases in which the contract provides delivery FOB destination or the contract provides delivery FOB origin and a price change is involved. Each modification shall be serially numbered.

(iv) The letters K, L, M, N, P, and Q are reserved for the exclusive use of the Air Force only in the second position for a Provisioned Items Order. Provisioned Items Orders shall be serially numbered by each issuing activity.

(v) The fourth through sixth positions shall always be numeric. A separate series of serial numbers shall be used for each type modification listed in (1) and (2) (ii), (iii), and (iv) above. In summary, the modifications issued by an activity for a contract shall be numbered in the second through sixth positions as follows:

Normal modification	Provisioned items order (reserved for exclusive use by the Air Force only)	Shipping instructions
00001-99999 then A0001-A9999 B0001-B9999 and so on to H0001-H9999 then J0001-J9999 then R0001-R9999 then AA001-HZ999 then JA001-JZ999 HA001—RZ999	K0001-K9999 KA001-KZ999 L0001-L9999 LA001-LZ999 M0001-M9999 MA001-MZ999 N0001-N9999 NA001-NZ999 P0001-P9999 PA001-PZ999 Q0001-Q9999 QA001-QZ999	S0001-S9999 SA001-SZ999 T0001-T9999 TA001-TZ999 U0001-U9999 UA001-UZ999 V0001-V9999 VA001-VZ999 W0001—W9999 WA001—WZ999 X0001-X9999 XA001-XZ999 Y0001-Y9999 YA001-YZ999

(3) ARZ999 is the six-position alpha-numeric number to be utilized the first time the office of administration or disbursement is being changed by use of computer generated modifications initiated by a CAO. The second change will utilize ARZ998, the third change ARZ997, and so forth. This method will only be utilized when mass changes are required.

(b) Supplementary identification numbers for modifications shall be assigned in consecutive chronological sequence by each issuing office authorized to issue modifications. To assure chronological assignment, modification numbers shall be assigned only after it has been determined that a modification is to be issued.

[51 FR 46074, Dec. 23, 1986, as amended at 55 FR 30156, July 24, 1990]

204.7004-4 Delivery orders under indefinite delivery type contracts, orders under basic ordering agreements, and calls under blanket purchase agreements.

(a) Delivery orders under indefinite delivery type contracts (orders), orders under basic ordering agreements (orders), and calls under blanket purchase agreements (calls) shall be identified by a four-position alpha-numeric "call/order serial number" which is supplementary to the 13-position basic PII number.

(1) Calls/orders issued by the purchasing office identified in the basic PII number shall be assigned numeric call/order serial numbers, beginning with 0001 through 9999.

(2) Calls/orders issued by an office other than the purchasing office identified in the basic PII number shall be assigned alphanumeric call/order serial numbers as follows:

(i) The first and second position shall be the alpha-numeric call/order serial number assigned to appendix N to the activity issuing the call/order. The letters A, I, O, and P shall not be used in the first position; however, A and P may be used in the second position.

(ii) The third and fourth positions shall be a serial number assigned by the issuing activity. The first call or order issued each contract or agreement shall be numbered 01. After the serial number 99 is used, a uniform series of numeric/alpha, alpha/numeric, and finally alpha serial numbers shall be assigned as follows (the letters I and O shall not be used):

1A, 1B, and so on to 1Z, then 2A, 2B, and so on to 2Z, and so on to
9A, 9B, and so on to 9Z, followed by
A1, A2, and so on to A9, then B1, B2, and so on to B9, and so on to
Z1, Z2, and so on to Z9, followed by
AA, AB, and so on to AZ, then BA, BB, and so on to BZ, and so on to
ZA, ZB, and so on to ZZ.

(b) If it is necessary to modify a call/order, a two-position alpha-numeric suffix (known as the call/order modification indicator) shall be added to the supplementary PII number as follows (the letters I and O shall not be used):

(1) Modification to a call/order—issued by the purchasing office, excluding any modification providing shipping instructions in those cases described in (2) and (3) below—01, 02, and so on through 99, then B1-B9, BA-BZ, C1, and so on through NZ and Z1 through ZZ;

(2) Modification to a call/order issued by a purchasing office providing initial or amended shipping instructions in those cases in which the call/order provides for delivery FOB destination or delivery FOB origin and a price change is involved—P1, P9, PA-PZ, Q1-Q9, QA-QZ, etc., through TZ;

(3) Modification to a call/order issued by a purchasing office providing initial shipping instructions or amending those shipping instructions previously issued in those cases in which the call/order provides delivery FOB origin and no price change is involved—U1-U9, UA-UZ, V1-V9, VA-VZ, and so on through YZ; and

(4) Modifications to a call/order issued by a Contract Administration Office (CAO) will begin with 1A, 1B, and so on to 1Z; then 2A, 2B, and so on to 2Z; and so on to 9A, 9B, and so on to 9Z, followed by A1, A2, and so on to A9; then AA, AB, and so on through AZ.

AZ will be utilized the first time a modification is generated by mechanical means (computer program) to change the name of the administration office or disbursing office. The second change will utilize AY, the third change AX, and so forth. This method will only be utilized when mass changes are required.

Subpart 204.71—Uniform Contract Line Item Numbering System

204.7101 Scope of subpart.

This subpart prescribes procedures for establishing and numbering all items of supplies or services set forth in contracts and in other documents related thereto issued pursuant to this supplement.

204.7102 Policy.

(a) These procedures provide criteria for establishing and numbering contract line items, contract subline items, exhibits, exhibit line items, and exhibit subline items.

(b) The procedures prescribed in this subpart shall be used in contracts (as defined in FAR 2.1) and in provisioning and other documents which are expected to become parts of contracts.

(c) When practicable, these procedures also shall be used in solicitations and other contractual documents.

(d) These procedures are mandatory for all contracts except as follows:

(1) When no postaward contract administration function on the specific

contract is assigned to any office listed in DoD Directory of Contract Administration Services Components;

(2) Indefinite delivery type contracts for petroleum products under which posts, camps, and stations issue delivery orders for such products for their own use; or

(3) Communication Service Authorizations issued by the Defense Commercial Communications Office, Defense Communications Agency.

(e) For cost-reimbursement type contracts, the provisions of this subpart apply except for the requirements in 204.7103-1(a)(1) and 204.7104.2(c)(2) for a single unit price or single total price or amount for each contract line or subline item.

(f) For maintenance and repair service type contracts in which firm prices for elements of the total price of an item are established but the number and quantity of such elements performed in order to determine the final item price to be paid are not known until performance (for example, a labor-hour contract), the provisions of this subpart apply except for the requirements in 204.7103-1(a)(1) and 204.7104-2(c)(2) for separate contract line items or subline items because of unit price differences for individual quantities of a line item or subline item. In lieu of establishing separate contract line items or subline items because of price differences, contractual documents for these types of contracts may be structured to reflect a firm or estimated total item amount for each such line or subline item only (omitting unit price).

204.7103 Contract line items.

204.7103–1 Criteria for establishing.

(a) Requirements for supplies or services shall be established as contract line items. Each contract line item shall:

(1) Have, or be anticipated to have, a single unit price or, if no unit price is established, a single total price or amount (unless associated subline items of other than an informational nature are separately priced in accordance with 204.7104-2(c)(2), in which case, no price shall be assigned to the contract line item, except for informational purposes unit prices and/or amounts may be entered in parentheses within the item description block); however, the unit price may be entered as "NSP" (not separately priced); *Provided*, the price of this item is included in the unit price of another contract line item;

(2) Be separately identifiable, i.e., no more than one National Stock Number, one item description, one Manufacturer's Part Number, etc., for a supply line item, or no more than one Scope of Work, one Description of Services, etc., for a services line item (unless this identification is provided by associated subline items of other than an informational nature; in which case, a general narrative description shall be assigned to the contract line item number and the subline item shall include the actual detailed identification in accordance with 204.7104-2(c)(3)); and

(3) Have a separate delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule) unless there are associated subline items of other than an informational character that meet this requirement. (When a requirement has multi-delivery dates or multi-destinations or multi-performance dates/points, that factor alone shall not require but does not preclude establishment of more than one contract line item. However, when more than one delivery date and/or more than one destination are identified to a single contract line item, the delivery schedule will specify delivery dates for the item by the destination when established, or individual contract line items may be established for each destination and/or delivery date and/or requisition.)

(b) As an alternative to setting forth in the Schedule an extensive list of contract line items, they may be shown in a contract exhibit as exhibit line items (see 204.7105 and 204.7106). In these cases, a Contract Line Item Number (CLIN) which references the exhibit will be assigned in the Schedule and shall specify the exhibit identifier. Contract line items for provisioned spares shown on a contract exhibit and data items shown on DD

Form 1423, Contract Data Requirements List, shall specify the exhibit identifiers.

(c) Requirements for test model approval under the development phase or for first article approval under the production phase (whether the requirement is for first article delivery for Government testing or for first article approval test report delivery based on contractor testing) shall require the establishment of a separate contract line or subline item for each item of supply or service (one Scope of Work, one Performance Description, one National Stock Number, one Manufacturer's Part Number, one drawing and piece number) unless the test model or first article consists of a lot composed of a mixture of items, in which case a single contract line or subline item may be established for the lot.

(d) Requirements expressing contractor responsibilities for which a separate price is not established or contained in the price of a supply or service line item but for which the contractor may be entitled to payment, shall not be assigned a contract line or subline item number, but shall be identified in the contract schedule. Examples of such requirements are transportation, packaging and handling, reusable containers, and state and/or local taxes. If it is determined that a separate price is to be established for these requirements, they shall meet the criteria in (a) above or in 204.7104-2(c) and shall be established as a line or subline item.

[51 FR 46074, Dec. 23, 1986, as amended at 55 FR 30156, July 24, 1990]

204.7103-2 Procedures for numbering.

(a) Contract line items within a contract shall consist of 4 numeric digits 0001 through 9999 and shall be numbered sequentially but not necessarily consecutively. Unless there is a valid reason to the contrary, the identical line item number assigned to an item in a solicitation pursuant to 204.7102(c) shall be assigned to that item when an award is made. Any given contract line item number shall not be assigned more than once in a contract, and line item numbers beyond "9999" shall not be used.

(b) When a contract line item contains subline items, each such subline item shall be numbered by adding to the basic line item number, two alphabetic or two numeric characters as specified in 204.7104.

204.7104 Contract subline items.

204.7104-1 General.

Contract subline items provide a further subdivision of the basic contract line item when it is necessary for contract performance or administration purposes to separately identify subordinate requirements. There are only two categories of contract sublines.

(a) The first category comprises those subline items that are included in the procurement instrument for information purposes only and are identified by a numeric suffix. These subline items are an integral part of the associated contract line item but shall not be scheduled separately for delivery, separately identified for shipment or performance, or separately priced for payment purposes.

(b) The second category comprises those subline items that have a separate delivery schedule, require separate identification at the time of shipment or performance and/or are separately priced for payment purposes. These subline items are identified by an alpha suffix.

204.7104-2 Criteria for establishing.

(a) Subline items included in procurement instruments for informational purposes only (numeric suffix) shall be established at the discretion of the contracting officer. This type of subline item identifies information that relates directly to and is an integral part of the contract line item; e.g., parts of an assembly or parts of a kit. Such subline items shall not have a separate delivery schedule, a separate price for payment purposes or require separate identification at the time of shipment or performance. Informational quantities, prices or amounts determined by the contracting officer as necessary to satisfy management requirements may be identified to such subline items; *Provided*, that such quantities, prices or amounts are set forth in parentheses within the Supplies/Services (item description) column of the contractual document (i.e., not within the quantity and price columns).

(b) Subline items that have a separate delivery schedule, require a separate identification at the time of shipment, and/or are separately priced for payment purposes (alpha suffix) shall be established in lieu of line items at the discretion of the contracting officer. This category subline item shall be established whenever a capability must be provided to accumulate separately identified price and/or quantity data at the contract line item level. For instance, this category subline may be used to identify:

(1) Identical items that are to be paid from more than one accounting classification (unless separate contract line items have been established for each accounting classification or accounting classifications have been identified to each consignee in the contract line item delivery schedule in accordance with 204.7108);

(2) Items of an identical nature where different sizes have been assigned discrete Federal supply stock numbers and/or different prices;

(3) Individually payable items such as packaging costs that pertain to a contract line item but are not included in the contract line item price (in this case, item description, price and quantity data for the line item also are to be entered as a separate subline item);

(4) Individual delivery dates and/or destinations and/or requisitions when multiple delivery dates, destinations and/or requisitions are designated in the procurement instrument for a contract line item; or

(5) Parts of an assembly or parts of a kit when the parts have a separate delivery schedule, require separate identification at the time of shipment or performance, and are separately priced for payment purposes.

Whenever subline items of this category (alpha suffix) are established, the associated contract line item shall serve only as a common denominator for the accumulation of management data by the procuring activity and all requirements for the associated contract line item will be identified as subline items. (All shipments and payments will be made at the subline item level.)

(c) Subline items in the alpha suffix category ((b) above) shall:

(1) Have a separate (i.e., subline item level) delivery schedule, period of performance or completion date expressly stated in the procurement instrument ("as required" is an expressly stated delivery schedule); and

(2) Have or be anticipated to have a single unit price or, if no unit price is established, a single total price or amount (When all subline items for a particular contract line item are identical services or supply items that have identical unit prices, the unit price and total amount (extended unit price for all subline items) may be shown at the contract line item level, or the unit price may be shown at the contract line item level and the extended amounts shown at subline item level, or the unit price and total amounts may be shown at subline item level, but only one of these methods may be used for a contract line item and its associated subline items. However, if any subline item has a different unit price than the remainder of the subline items, all subline items shall be separately priced and the contract line item shall not be priced. In this latter instance, subline items that are not separately priced but must be separately identified for shipment and management purposes may indicate a unit price of "NSP" (not separately priced); *provided*, the price of this item is included in the unit price of another subline item or different contract line item. The clause set forth in 252.204-7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered. In no instance will the contract line item/subline item structure be constructed in such a way as to require the identification of contractor products or services (shipment or performance) at the subline item level and contractor payment at the contract line item level); and

(3) Be separately identifiable (i.e., no more than one National Stock

Number, one Item Description, one Manufacturer's Part Number, etc., for a supply subline item, or no more than one Scope of Work, one Description of Services, etc.) for a services subline item.

204.7104-3 Procedures for numbering.

(a) When contract subline items are established within a contract line item, the total effort shall be assigned a contract line item number and each subline item shall be assigned a contract subline item number.

(b) Contract subline items established within a contract line item for information purposes only (204.7104-1(a) and 204.7104-2(a)) shall be numbered by adding to the contract line item number two numeric characters commencing with "01" and continuing through "99." No such designation shall be assigned more than once to the same contract line item number within a procurement instrument. The two supplemental numeric characters shall be placed immediately following the contract line item number without separation by spaces or special characters. Example follows:

Item No	Supplies/Services	Quantity	Unit	Unit price	Amount
0002	15B/EE Periscope Adapter System. NSN-2040-00-916-2842, including one set of the following for each system.	12	EA	$72,831.00	$873,972.00
000201	Indicator and Control Box (1 ea.)				
000202	Well Junction Box (1 ea.)				
000203	Remote Indicator Box (ECM RM) (1 ea.)				
	• • • • •	•	•		
000210	Set Dip Loop Cables (1 ea.)				

NOTE.—In the above instance, the delivery schedule will identify the contract line item (not the subline items) and all shipments and payments will be at the contract line item level. Shipment documents and payment vouchers will not identify subline items.

(c) Contract subline items established to identify contractual requirements that have a separate delivery schedule, require identification at the time of shipment or accomplishment and/or are separately priced for payment purposes (see 204.7104-1(b) and 204.7104-2(b) shall:

(1) Be numbered by adding to the contract line item number two alphabetic characters commencing with "AA" and continuing through "ZZ." (The letters "I" and "O" shall not be used.) Contract sublines shall be numbered sequentially but not necessarily consecutively. No such designation shall be assigned more than once to the same contract line item number within a contract;

(2) Be sequenced within a contract line item as follows: AA, AB, AC through AZ; then BA, BB, BC through BZ; and continuing, if necessary, through ZZ; and

(3) Be constructed by placing the two supplemental alphabetic characters immediately following the contract line item without separation by spaces or special characters. For example, with contract line item number "0001" the first three contract subline items, if consecutive, would be numbered "0001AA," "0001AB," and "0001AC."

Examples of correct line item structures in this category are shown below:

Example 1.—Subline items structured to identify destinations for identical items, identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/Services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Helicopter. PRON A1-9-63821-M1-M1 ACR: AA				

Item No.	Supplies/Services	Quantity	Unit	Unit price	Amount
0001AA	A3168R-9030-4025 A2537M IPD: 2 RDD: 334 PROJ: 501	10	Ea	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	10	Ea	$100.00	$1,000.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	15	Ea	$100.00	$1,500.00

Example 2.—Subline items structured to identify destinations for identical items, not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No.	Supplies/Services	Quantity	Unit	Unit price	Amount
0001	NSN 1615-00-591-6620 Shim, Aluminum Alloy, . . . Apbl, Rotor, Helicopter PRON A1-9-63821-M1-M1 ACR: AA				
0001AA	A3168R-9030-4025 A2573M IPD: 2 RDD: 334 PROJ: 501	10	Ea	$100.00	$1,000.00
0001AB	A3168R-9030-4026 A51AXBM IPD: 2 RDD: 325 PROJ: 502	20	Ea	$99.00	$1,980.00
0001AC	A3168R-9030-4027 A67KBCM IPD: 2 RDD: 349 PROJ: 503	30	Ea	$98.00	$2,940.00

NOTE.—Difference in prices for identical items is due to separate destinations for FOB destination delivery.

Example 3.—Subline items structured to identify different sizes of an item that are identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No	Supplies/Services	Quantity	Unit	Unit price	Amount
0013	Boots Insulated, Cold Weather White, Type II, Class 1		Pr	$38.35	$13,422.50
0013AA	8430-00-655-5541 Size 5N	50			
0013AB	8430-00-655-5544 Size 8N	70			
0013AC	8430-00-655-5551 Size 9N	30			
0013AD	8430-00-655-5535 Size 9R	200			

NOTE.—Unit price and total amount shown at line item level rather than at subline level, as authorized by 204.7104-2(c)(2), when all subline items of a line item identically priced.

Example 4.—Subline items structured to identify different sizes of an item that are not identically priced (Delivery schedule shall be established for each subline item, not the contract line item.).

Item No	Supplies/Services	Quantity	Unit	Unit price	Amount
0002	Body Armor Ground Troops Variable Type Small Arms, Fragmentation Protective Nylon Felt Vest, Front and Back Plates, Ceramic Plate, Type I.				
0002AA	First Article	1	LO	NSP	
0002AB	8470-00-141-0935, Medium Regular	1936	SE	$331.77	$642,306.72
0002AC	8470-00-141-0936, Large Regular	625	SE	355.77	222,356,25
0002AD	8470-00-141-0937, Medium Long	1237	SE	346.77	428,954.49
0002AE	8470-00-141-0938, Large Long	804	SE	365.77	294,079.08

NOTE.—First Article entered as "Lot" in accordance with 204.7103-1(c).

Example 5.—Subline items structured to provide the capability for relating subordinate separately priced packaging costs to the overall contract line item (Separate delivery schedules shall be established for the subline item identifying the contractor's product and for the subline item identifying packaging. No schedule will be established for the contract line item.)

Item No	Supplies/Services	Quantity	Unit	Unit price	Amount
0001	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor ACR: AA.				
0001AA	6105-00-635-6568 50380 Ref. No. 63504-WZ Armature Motor	2	EA	$2,895.87	$5,791.74
0001AB	Packaging	2	EA	289.58	579.16

Example 6.—Subline items structured to identify different accounting classifications for identical items (Delivery schedule shall be established for each subline item, not the contract line item.).

AJ: 17X1505183503150691000001 92B000000000000000000
AK: 17X15051837031756910000019 2B000000000000000000
AL: 17X150519350314369100000192B000000000000000000

Item No	Supplies/Services	Quantity	Unit	Unit price	Amount
0002	Pulse Decoder KY-312/A5Q-19		EA	$3,037.40	
0002AA	Pulse Decoder KY-312/A5Q-19 ACR: AJ	2			$6,074.80
0002AB	Pulse Decoder KY-312/A5Q-19 ACR: AK	6			18,224.40
0002AC	Pulse Decoder KY-312/A5Q-19 ACR: AL	2			6,074.80

NOTE.—Unit price may be shown at line item level and total amounts shown at subline item level, as authorized by 204.7104-2(c)(2), when all subline items of a line item are identically priced.

Example 7.—Subline items structured to identify parts of an assembly (Delivery schedule and price shall be established for each identified part at the subline item level, not for the assembly at the contract line item level.).

Item No	Supplies/Services	Quantity	Unit	Unit price	Amount
0003	Automatic Degausing System Consisting of: (2 ea. @ $52,061; $104,122 total).				
0003AA	Switchboard	2	EA	$52,601.00	$104,122.00
0003AB	Remote Control Panel	2	EA	NSP	
0003AC	Power Supply (M Coil) SSM Type (145 Amps, 220 V DC)	2	EA	NSP	
*	* * *	*		*	*
0003AF	Power Supply (A Coil) SSM Type (118 Amps, 220 V DC)	2	EA	NSP	

NOTE.—In the above instance, the price of all other subline items indicated by "NSP" is included in the Switchboard. The clause set forth at 252.204-7000 shall be inserted in applicable contracts when in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

Example 8.—Subline items structured to identify parts of a kit (Delivery schedule and price shall be established for each identified part at the subline item level, not for the kit at the contract line item level.).

Item No.	Supplies/Services	Quantity	Unit	Unit price	Amount
0031	Conversion Kit to Convert Torpedo MK 45 Mod 0 to Torpedo MK 45 Mod 1 (50 Kt @ $10,868.52; $543,426 total).				
0031AA	Integrator Assy. LD 620106	50	EA	$10,868.52	$543,426.00
0031AB	Pulse Generator Assy. LD 587569	50	EA	NSP	
0031AC	Drive Shaft Assy. LD 587559	50	EA	NSP	
*	* * *	*		*	*
0031BF	Actuator Panel Assy. LD 542924	50	EA	NSP	

NOTE.—In the above instance, the price of all other subline items indicated by "NSP" is included in the Integrator Assembly. The clause set forth at 252.204-7000 shall be inserted in applicable contracts when, in the opinion of the contracting officer because of dollar value or other considerations, it is necessary to preclude payment for a subline item until all related subline items identified as not separately priced have been delivered.

204.7105 Contract exhibits and attachments.

204.7105-1 Definitions.

(a) *Exhibit.* An exhibit is a document, referenced in and appended to a procurement instrument, which establishes a deliverable requirement.

(b) *Attachment.* An attachment is a document, appended to or incorporated by reference in a procurement instrument, which describes, but does not establish, a deliverable requirement.

[55 FR 30156, July 24, 1990]

204.7105-2 Policy.

(a) *Exhibit.* Exhibits may be used as an alternative to setting forth, in the Schedule, a list of line or subline items. The term "exhibit" shall be used only to identify those appendages to the contract that establish a deliverable requirement, such as Contract Data Requirement List, DD Form 1423, or a spare parts list. The DD Form 1423 shall always be an exhibit.

(b) *Attachment.* Attachments do not establish deliverable requirements, but may be used to define or describe contractual requirements. Attachments may include statements of work, DD Form 254, or other documents.

[55 FR 30156, July 24, 1990]

204.7105-3 Procedures.

(a) *Exhibits.* (1) Exhibits are identified by a single or double capital letter. The letters "I" and "O" shall not be used.

(2) Exhibit identifiers need not be assigned consecutively, nor sequentially, but shall not be duplicated in the procurement instrument. They shall appear in the first or first and second positions of all applicable "Exhibit Line Item Numbers" (see 204.7106).

(3) Each page of the exhibit shall cite the procurement instrument identification number and applicable contract line or subline item number.

(4) Each exhibit shall apply to one contract line or subline item only, with the following exceptions: (i) one exhibit may apply to one or more option line item(s) when the data required under the exhibits are identical in all respects other than the period during which the option is to be exercised; and, (ii) an exhibit may apply to more than one contract line if the exhibit is not separately priced and the exhibit deliverable is identical for all applicable contract lines. More than one exhibit may apply to a single contract line item.

(5) When the contract contains a DD Form 1423, the data may be either separately priced or not separately priced (NSP).

(i) For negotiated acquisitions of $100,000 and over, when data are separately priced, the contracting officer shall either insert the negotiated prices in Section B of the contract Schedule, or, adjust the proposed prices on the DD Form 1423. The method used shall be consistent throughout an individual contract. When the prices are put in Section B of the Scheule, blocks 17 and 18 of the DD Form 1423 shall be detached and filed elsewhere in the contract file. However, when prices on the DD Form 1423 are adjusted, blocks 17 and 18 shall not be detached from the form. Also, when prices on the DD Form 1423 are adjusted, the total price of all separately priced deliverable data items attributable to a line item, shall be included parenthetically, below the "Supplies Services" for that line item, in Section B of the Schedule. Except for the requirement to parenthetically enclose data prices, mentioned in the preceding sentence, prices shall only be listed one place in the contract.

(ii) For NSP data, prices are included in priced line or subline items in the contract. Blocks 17 and 18 of the DD Form 1423 shall be detached, and may be retained elsewhere as required.

(b) Attachments shall be identified numerically.

[55 FR 30157, July 24, 1990]

204.7106 Exhibit line and subline items.

204.7106-1 Criteria for establishing.

Criteria for the establishment of exhibit line and subline items shall be the same as for establishing contract line and subline items (see 204.7103-1 and 204.7104-2, respectively).

204.7106-2 Procedures for numbering.

(a) Exhibit line items within an exhibit shall be assigned four-position numbers. The exhibit identifier (see 204.7105-3(a)) is used for the first or first and second positions; the remaining positions are assigned sequentially within each exhibit using alpha and numeric characters. The letters "I" and "O" shall not be used. Exhibit line item numbers shall be sequenced as set forth in 204.7106-3, except that numeric numbering may be employed in those cases where such numbering is adequate to meet the criteria established by 204.7106-1.

(b) Exhibit subline items shall be numbered in the same manner as specified for contract subline items (see 204.7104-3).

[51 FR 46074, Dec. 23, 1986, as amended at 55 FR 30157, July 24, 1990]

204.7106-3 Sequence of exhibit line item numbers.

Cumulative No. of line items	Two-position serial No. for double-letter exhibit identifier—serial No. sequence
1-33	01 thru 09, then OA thru OZ, then
34-67	10 thru 19, then 1A thru 1Z, then
68-101	20 thru 29, then 2A thru 2Z, then
102-135	30 thru 39, then 3A thru 3Z, then
136-169	40 thru 49, then 4A thru 4Z, then
170-203	50 thru 59, then 5A thru 5Z, then
204-237	60 thru 69, then 6A thru 6Z, then
238-271	70 thru 79, then 7A thru 7Z, then
272-305	80 thru 89, then 8A thru 8Z, then
306-339	90 thru 99, then 9A thru 9Z, then
340-373	AO thru A9, then AA thru AZ, then
374-407	BO thru B9, then BA thru BZ, then
408-441	CO thru C9, then CA thru CZ, then
442-475	DO thru D9, then DA thru DZ, then
476-509	EO thru E9, then EA thru EZ, then
510-543	FO thru F9, then FA thru FZ, then
544-577	GO thru G9, then GA thru GZ, then
578-611	HO thru H9, then HA thru HZ, then
612-645	JO thru J9, then JA thru JZ, then
646-679	KO thru K9, then KA thru KZ, then
680-713	LO thru L9, then LA thru LZ, then
714-747	MO thru M9, then MA thru MZ, then
748-781	NO thru N9, then NA thru NZ, then
782-815	PO thru P9, then PA thru PZ, then
816-849	QO thru Q9, then QA thru QZ, then
850-883	RO thru R9, then RA thru RZ, then
884-917	SO thru S9, then SA thru SZ, then
918-951	TO thru T9, then TA thru TZ, then
952-985	UO thru U9, then UA thru UZ, then
986-1019	VO thru V9, then VA thru VZ, then
1020-1053	WO thru W9, then WA thru WZ, then
1054-1087	XO thru X9, then XA thru XZ, then
1088-1121	YO thru Y9, then YA thru YZ, then
1122-1155	ZO thru Z9, then ZA thru ZZ

Cumulative No. of line items	Three-position serial No. for double-letter exhibit identifier—serial No. sequence
1-33	001 thru 009, then 00A thru 00Z, then
34-67	010 thru 019, then 01A thru 01Z, then
68-101	020 thru 029, then 02A thru 02Z, then
102-135	030 thru 039, then 03A thru 03Z
136-305	and so on to
306-339	090 thru 099, then 09A thru 09Z, then
340-373	0A0 thru 0A9, then 0AA thru 0AZ, then
374-407	0B0 thru 0B9, then 0BA thru 0BZ, then
408-441	0C0 thru 0C9, then 0CA thru 0CZ
442-1121	and so on to
1122-1155	0Z0 thru 0Z9, then 0ZA thru 0ZZ, then
1156-1189	100 thru 109, then 10A thru 10Z, then
1190-1223	110 thru 119, then 11A thru 11Z, then
1224-1257	120 thru 129, then 12A thru 12Z
1258-1461	and so on to
1462-1495	190 thru 199, then 19A thru 19Z, then
1496-1529	1A0 thru 1A9, then 1AA thru 1AZ, then
1530-1563	1B0 thru 1B9, then 1BA thru 1BZ
1564-2277	and so on to
2278-2311	1Z0 thru 1Z9, then 1ZA thru 1ZZ, then
2312-2345	200 thru 209, then 20A thru 20Z, then
2346-2379	210 thru 219, then 21A thru 21Z, then
2380-2413	220 thru 229, then 22A thru 22Z
2414-2617	and so on to
2618-2651	290 thru 299, then 29A thru 29Z, then
2652-2685	2A0 thru 2A9, then 2AA thru 2AZ, then
2686-2719	2B0 thru 2B9, then 2BA thru 2BZ
2720-3433	and so on to
3434-3467	2Z0 thru 2Z9, then 2ZA thru 2ZZ, then
3468-3501	300 thru 309, then 30A thru 30Z
3502-10,403	and so on to
10,404-10,437	900 thru 909, then 90A thru 90Z, then
10,438-10,471	910 thru 919, then 91A thru 91Z
10,472-10,709	and so on to
10,710-10,743	990 thru 999, then 99A thru 99Z, then
10,744-10,777	9A0 thru 9A9, then 9AA thru 9AZ, then
10,778-10,811	9B0 thru 9B9, then 9BA thru 9BZ
10,812-11,525	and so on to
11,526-11,559	9Z0 thru 9Z9, then 9ZA thru 9ZZ

204.7107 Contract modifications.

Items of supplies or services set forth in contract or exhibit modifications shall reflect the applicable line or subline item numbers, if any, appearing in the basic contract, except in those instances when the nature of the modification necessitates re-identification of a partial quantity of an existing contract line item or exhibit line item. Situations described below are intended to furnish guidance as to when a new line or subline item number should or should not be assigned as the result of a contract modification.

(a) Modification applying to definitized items (firm price of item is included in the contract or, if this modification establishes additional quantities of items already included in the contract, the price of the item in the modification is the same as in the contract or, if this is a new item, the modification contains a firm price):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103-1(a)(2) and 204.7104-2(c)(3)), and the unit price change is averaged to provide a revised single unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or services to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification affects only a partial quantity of an existing contract or exhibit line item or subline item and changes other than delivery date and/or, ship to/mark for data, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(b) Modifications applying to undefinitized items (although a requirement for this item has already been included in the contract or previous exhibit a firm price has not been negotiated or, if this modification establishes additional quantities of an item, the price of the item in the modification is not firm or if this modification adds a new item for which the firm price has not been established):

(1) If the modification applies to the total quantity of the existing line or subline item, the original line or subline item number may be retained.

(2) If the modification changes the specification of a partial quantity of the existing contract or exhibit line or subline item, but the specification change is not of sufficient magnitude to make the partial quantity separately identifiable (e.g., new National Stock Number or item description, see 204.7103-1(a)(2) and 204.7104-2(c)(3)), and the unit price change is averaged to provide a revised single estimated unit price for the total quantity on the line or subline item, the original contract or exhibit line or subline item number may be retained.

(3) If the modification adds a new item of supply or service to the contract or exhibit, the new item shall be assigned the next unused contract or exhibit line or subline item number.

(4) If the modification is undefinitized (price) and increases the quantity of an existing definitized (price) contract or exhibit line or subline item, the next unused contract or exhibit line or subline item number will be assigned to the increased quantity.

(5) If the modification increases the quantity of an existing but undefinitized (price) contract or exhibit line or subline item, the original line item number may be retained if the same unit price applies to the total quantity (existing plus increase) of the line item; if the unit price of the increased quantity differs from that of the existing quantity, the next unused contract or exhibit line item or subline item number will be assigned to the increased quantity.

(6) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and definitizes price, the definitized portion shall retain the original contract or exhibit line or subline item number. The undefinitized portion shall be assigned the next unused contract or exhibit line or subline item number; however, if the same item on another existing contract or exhibit line or subline item has already been definitized and the newly definitized quantity is definitized at the same unit price as the existing definitized quantity, or an average definitized unit price is established for the new and the existing definitized quantities, then the undefinitized portion may retain its existing line item number and the newly definitized quantity may be added to the contract or exhibit line item for the previously definitized quantity.

(7) If the modification affects only a partial quantity of an existing contract or exhibit line or subline item and does not change the delivery schedule nor definitize price, the unchanged portion shall retain the original contract or exhibit line or subline item number. The changed portion shall be assigned the next unused contract or exhibit line or subline item number.

(c) In any event, all items of supplies or services appearing in modifications and exhibits shall be established and numbered in accordance with the uniform numbering procedures prescribed in this subpart. If subline numbers are assigned, all requirements for the associated contract or exhibit line item will be identified as subline items, and the contract or exhibit line item will serve only as a common denominator for the accumulation of management data.

204.7108 Contract Accounting Classification Reference Number (ACRN).

204.7108–1 General.

As a method of relating the long line accounting classification citation number to detail line item scheduled information, the Accounting Classification Reference Number (ACRN) shall be utilized in all contracts assigned for the contract administration to the Defense Contract Administration Services, DLA, and to Plant Cognizance Representatives of the Military Departments and Agencies.

204.7108–2 Criteria for establishing.

This two position alpha/numeric control code is required for Military Standard Contract Administration Procedures (MILSCAP) processing, and may also be used in contracts administered by each Service/Agency. Under MILSCAP, the ACRN is required to associate the Accounting Classification Trailer Record, the Supplies Schedules Data Record and the Services Line Item Data Record with the long line accounting classification. The reference number is also used to associate the various record formats of the Contract Payment Notice as described in Chapter 9 of the MILSCAP Manual, DoD 4105.63–M.

204.7108–3 Procedures for using the Accounting Classification Reference Number (ACRN).

(a) The ACRN will be any combination of a two position alpha/numeric code assigned discretely to each accounting classification within each contract. The letters "I" and "O" shall not be used.

(b) This code will be shown as a detached prefix to the long line accounting classification number in the Accounting and Appropriation Data block and/or Section K (Contract Administration Data) of the contract, except that accounting classification numbers included in the contract only for the information of the Transportation Officer for citation on Government bills of lading for shipment at Government expense of items on an f.o.b. origin contract need not be prefixed with an ACRN. In the case of modifications to contracts/orders which have been previously assigned a long line accounting classification number(s), only the ACRN(s) assigned to that number(s) need be shown in the Accounting and Appropriations Data block and/or Continuation Sheet(s) of the modification.

(c) If more than one ACRN is assigned in the contract, the ACRN shall also be shown in the contract Schedule as follows:

(1) The ACRN shall be shown adjacent to the identity code of each "Ship To/Mark For," unless the procedure in (2) or (3) below is used. Only one ACRN may be assigned to the same "Ship To/Mark For" within the same contract line or subline item number, except in rare cases when multiple accounting classifications apply to a single unit so the quantity cannot be subdivided to relate to a single accounting classification. In such case, the contract shall provide sufficient information under the heading "Payment Instructions for Multiple Fund Accounting Citations" to permit proper payment and fund accounting;

(2) If only one accounting classification applies to a subline item, the ACRN may be shown in the Supplies/Services column near the subline item description;

(3) If only one accounting classification applies to a line item, the ACRN may be shown in the Supplies/Services column near the line item description;

(4) The ACRN shall be shown in the contract and Schedule in the following manner: ACR:1D.

(5) For cost-reimbursement type contracts, the provisions of this paragraph (c) do not apply.

(d) The purchasing office executing a contract, basic ordering agreement, or blanket purchase agreement is responsible for control of assignment of ACRNs pertaining thereto. Contract or agreement provisions which provide for the issuance of contract modifications (including provisioned item order modifications), calls, orders, or work requests by organizations other than the purchasing office executing the contract or agreement will contain instructions for ACRN assignment. This may be accomplished by individual assignments as funds are cited, by assignment of blocks of ACRNs to offices authorized to issue contract modifications, calls, orders or work requests or by some other appropriate method. In no case, however, will an ACRN apply to more than one long line accounting classification in a contract. The authority to control ACRN assignment shall not be delegated to another office by the purchasing office issuing the contract or agreement.

204.7109 Indefinite delivery type contracts.

(a) When an indefinite delivery type contract includes provisions wherein the price of an item is determined at the time a delivery order is issued based on such factors as the quantity to be ordered (e.g., 10-99 at $1.00, 100-249 at $.98, and 250 or more at $.95), the FOB provision, the destination, or the type pack required in the delivery order, it shall not be necessary to assign a separate line item number in the indefinite delivery type contract to each price for the same item. Each line or subline item in the individual delivery order, however, shall cite only one of the unit prices in the indefinite delivery type contract.

(b) Except as noted in (a) above, criteria for contract line item assignment (see 204.7103) shall be applicable to indefinite delivery type contracts.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 205—PUBLICIZING CONTRACT ACTIONS

Sec.
205.002 Policy.

Subpart 205.1—Dissemination of Information

205.102 Availability of solicitations.

Subpart 205.2—Synopses of Proposed Contract Actions

205.201 General.
205.203 Publicizing and response time.
205.204 Presolicitation notices.
205.207 Preparation and transmittal of synopses.

Subpart 205.3—Synopses of Contract Awards

205.302 Preparation and transmittal of synopses of awards.
205.303 Announcement of contract awards.

Subpart 205.4—Release of Information

205.404-1 Release procedures.
205.404-2 Announcements of long-range acquisition estimates.
205.470 Contractor information to be provided to cooperative agreement holders.

Subpart 205.5—Paid Advertisements

205.502 Authority.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Source: 51 FR 46100, Dec. 23, 1986, unless otherwise noted.

205.002 Policy.

(c) Small business specialists in each purchasing office are responsible for screening all proposed contract actions and for recommending action to be taken with respect to publicizing such actions in accordance with the requirements of this subpart. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

Subpart 205.1—Dissemination of Information

205.102 Availability of solicitations.

(a)(4)(i) When the purchasing activity is not in possession of complete sets of specifications, plans, and drawings (as in some acquisitions for airframes, shipbuilding, or major weapons systems), or the drawings and specifications are classified, or are so voluminous that display and distribution in accordance with prescribed procedures is impracticable, the solicitation shall contain notice of this fact and of the location at which the specifications, plans, or drawings may be examined.

[51 FR 46100, Dec. 23, 1986, as amended at 53 FR 38179, Sept. 29, 1988]

Subpart 205.2—Synopses of Proposed Contract Actions

205.201 General.

(b) *Commodity assignments.* When an item is assigned or is within a Federal Supply Class assigned for acquisition in FAR subpart 17.5 and is purchased by other than the assigned Department, the synopsis shall cite the applicable purchase exclusion number from 208.7101-1 or 208.7101-2.

[51 FR 46100, Dec. 23, 1986, as amended at 52 FR 34785, Sept. 15, 1987; 54 FR 53616, Dec. 29 1989]

205.203 Publicizing and response time.

(b) (S-70) When requested by a source located in a participating country or a designated country as defined in part 225, the contracting officer shall allow at least 45 days response time for receipt of bids or proposals from the date of issuance of the solicitation if this is consistent with Government requirements.

[52 FR 34785, Sept. 15, 1987]

205.204 Presolicitation notices.

See FAR 14.205-4(c) and 215.404(b).

205.207 Preparation and transmittal of synopses.

(d) (S-72) When the proposed acquisition provides for a total small disadvantaged business (SDB) set-aside under 206.203-70, state: "The proposed contract listed here is a 100 percent small disadvantaged business set-aside. Offers from concerns other than small disadvantaged business concerns are not solicited."

(d)(S-73) When the proposed acquisition is being considered for possible total small disadvantaged business set-aside under 206.203-70, state:

> The proposed contract listed here is being considered for 100 percent set-aside for small disadvantaged business (SDB) concerns. Interested SDB concerns should, as early as possible but not later than 15 days of this notice, indicate interest in the acquisition by providing to the contracting office above evidence of capability to perform and a positive statement of eligibility as a small socially and economically disadvantaged business concern. If adequate interest is not received from SDB concerns, the solicitation will be issued as ______ (enter basis for continuing the acquisition) without further notice. Therefore, replies to this notice are requested from ______ (enter all types business to be solicited in the event an SDB set-aside is not made; e.g., all small business concerns, all business concerns, etc.) as well as from SDB concerns."

(d)(S-74) When an individual acquisition is being considered for possible total set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) under 206.270, state:

> The Proposed contract listed here is being considered for 100 percent set-aside for Historically Black Colleges and Universities (HBCUs) or Minority Institutions (MIs) as defined at Section 226.7002 of the DoD FAR Supplement. Interested HBCUs or MIs should, as early as possible but not later than 15 days of this notice, indicate interest in the acquisition by providing to the contracting office above evidence of capability to perform and a positive statement of eligibility as an HBCU or MI (see Section 226.7006 of the DoD FAR Supplement). If adequate interest is not received from HBCUs and MIs, the solicitation will be issued as ______ (enter basis for continuing the acquisition, e.g., unrestricted), without further notice. Therefore, replies to this notice are requested from (enter all types of entities to be solicited in the event a set-aside to HBCUs and MIs is not made).

(d) (S-75) When an individual acquisition provides for a total set-aside for HBCUs and MIs under 206.270, state:

> The proposed contract listed here is a 100 percent set-aside for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) as defined at section 226.7002 of the DoD FAR Supplement. Offers from other than HBCUs and MIs are not solicited.

(d) (S-76) When a notice of availability of a Broad Agency Announcement (BAA) is published in the CBD pursuant to FAR 35.016(c), the notice shall indicate whether any portions of the BAA will be set aside for HBCU and MI participation (see 235.016-70).

(e) (S-70) If the synopsis is for a proposed contract action intended to be restricted to domestic source(s) under the authority of FAR 6.302-3, the synopsis shall include reference to Numbered Note 13.

[52 FR 16264, May 4, 1987 as amended at 53 FR 5116, Feb. 19, 1988; 53 FR 20628, June 6, 1988; 53 FR 28174, Sept. 29, 1988; 54 FR 53616, Dec. 29, 1989]

Subpart 205.3—Synopses of Contract Awards

205.302 Preparation and transmittal of synopses of awards.

(b) The synopsis of contract awards shall also contain the following information:

(2) Size status ((S) for small business and (L) for large business) of the contractor;

205.303 Announcement of contract awards.

(a) *Public announcement.* Information on proposed contractual actions over $5 million shall be submitted in writing in accordance with Departmental/Agency procedures. Report Control Symbol DD-LA(AR)1279 applies. Departments will submit reports to the Office of the Assistant Secretary of Defense (Public Affairs) by the close of business the day before contract award is proposed.

(S-70) *Congressional notification.* In accordance with Departmental procedures, Departments shall notify the appropriate Members of Congress (Senators and Representatives in whose state and district the proposed contractor is located and, if different, in whose state and district the work is to be performed) of contract awards of over $5 million concurrent with the public announcement described in (a) above.

[51 FR 46100, Dec. 23, 1986, as amended at 54 FR 7427, Feb. 21, 1989]

Subpart 205.4—Release of Information

205.404-1 Release procedures.

(b)(1) Classified information shall be released through existing security channels in accordance with DoD Industrial Security Regulation (DoD 5220.22R).

205.404-2 Announcements of long-range acquisition estimates.

Activities publishing long-range procurement estimates shall publicize them in the *Commerce Business Daily* by forwarding to the address listed in FAR 5.207 an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

The Defense Personnel Support Center has published an estimate of equipment and footwear procurement requirements for _____ and _____ Quarters FY _____. These estimates, *which are subject to revision and are in no way binding on the Government,* may be obtained, by request, from the Defense Personnel Support Center (ATTN: Procurement and Production Directorate), 2800 South 20th Street, Philadelphia, Pennsylvania 19101.

205.470 Contractor information to be provided to cooperative agreement holders.

(a) As required by 10 U.S.C. 2413, the Defense Logistics Agency enters into Cooperative Agreements with: state or local governments; private, non-profit organizations; tribal organizations (as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93268; 25 U.S.C. 450(c)); or economic enterprises as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93-362; 25 U.S.C. 1452(e)), whether such economic enterprise is organized for profit or nonprofit purposes.

(b) As required by 10 U.S.C. 2416 any contractor receiving a Defense contract for more than $500,000 must agree, upon request, to provide Cooperative Agreement Holders described in (a) above, with a list of those appropriate employees responsible for entering into subcontracts under prime Defense contracts. The list shall include the business address, telephone number, and area of responsibility of each such employee. A defense contractor need not provide the listing to a particular Cooperative Agreement holder more frequently than once a year.

(c) The contracting officer shall insert the clause at 252.205-7000, Release of Information to Cooperative Agreement Holders, in solicitations and contracts when the contract amount is expected to exceed $500,000.

[52 FR 12387, Apr. 16, 1987 and 53 FR 38193, Sept. 29, 1988, as amended at 54 FR 7427, Feb. 21, 1989; 54 FR 46902, Nov. 8, 1989]

Subpart 205.5—Paid Advertisements

205.502 Authority.

(a) The authorization shall specify the limitations, if any, of the authority granted. Administrative duties involved in accomplishing the advertising may be delegated in writing, personally signed by the delegate, setting forth the extent of the administrative duties involved. A copy of the instrument delegating authority to advertise and a copy of the instrument assigning administrative duties thereunder will either be attached to the first voucher submitted for payment or shall be forwarded immediately upon issuance to the General Accounting Office address to which records of the Department are submitted for audit purposes. When authority to advertise has been delegated by the Secretary of the Department concerned, a reference to the authorizing directive on the advertisement order is acceptable in lieu of attaching a copy of the authority to the payment voucher. Copies of such instruments also shall be attached to the duplicate voucher submitted to the paying office.

(1) Special or general authority to place advertisements in newspapers must be secured in advance by the use of DD Form 1535, Request/Approval for Authority to Advertise. Special authority permits the publication of a given advertisement a specified number of times in designated newspapers. General authority permits the publication of such advertisements during a designated fiscal year as may be required.

(2) Requests for authority to place advertisements in newspapers shall be submitted through channels to the Secretary or his designee.

(b) Unless the Secretary of the Department concerned determines otherwise, DD Form 1535 is not required as authority to place advertisements in media other than newspapers. Paid advertisements to recruit civilian personnel shall be subject to the limitations in section 332-1-9 of the Federal Personnel Manual.

PART 206—COMPETITION REQUIREMENTS

Subpart 206.2—Full and Open Competition After Exclusion of Sources

Sec.

206.202 Establishing or maintaining alternative sources.
206.203 Set-aside for small business and labor surplus area concerns.
206.203-70 Set-asides for small disadvantaged business concerns.
206.270 Set-Asides for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.
206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
206.302-2 Unusual and compelling urgency.
206.302-4 International agreement.
206.302-5 Authorized of required by status.
206.303 Justifications.
206.303-1 Requirements.

Sec.

206.304 Approval of the justification.
206.305 Availability of the justification.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46102, Dec. 23, 1986, unless otherwise noted.

Subpart 206.2—Full and Open Competition After Exclusion of Sources

206.202 Establishing or maintaining alternative sources.

(a) This authority may be used, as appropriate, to totally or partially exclude a particular source from a contract action.

(b)(S-70) *Additional instructions and formats for agency head determination and findings for exclusion of a particular source.*

(i) When the authority of FAR 6.202(a) is proposed for use, it must be shown clearly that the necessity for excluding a particular source arises from genuine considerations pertinent to the authority of FAR 6.202(a)(1), (2), or (3). The supporting data, as well as the determination and findings, must name the source to be excluded from the contract action. Additionally, the supporting documents shall include the following information as applicable, and such other information as may be pertinent:

(A) The specific purpose to be served (i.e. to increase or maintain competition, the interest of national defense in case of a national emergency or industrial mobilization, or the interest of national defense in establishing or maintaining an essential engineering, research or development capability) by excluding a particular source from the contract action;

(B) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award;

(C) The circumstances which make it necessary to exclude a particular source from the contract action:

(*1*) The reasons for lack of, or potential loss of, alternative sources; e.g., the technical complexity and criticality of the item;

(*2*) The current annual requirement and prospective needs for the supplies or services;

(*3*) Address projected future requirements as justification for the exclusion of a particular source from the contract action;

(D) Explain whether the existing source must be totally excluded from a contract action or whether a partial exclusion of the existing source from a contract action is sufficient;

(E) Describe the potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions;

(F) When the authority of FAR 6.202(a)(1) is cited:

(*1*) Provide basis for assumption of future competition;

(*2*) Provide the basis for the determination that exclusion of a particular source will likely result in reduced overall costs either for the current acquisition, or for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, facilitization costs, duplicative administration costs (additional inspection, testing, etc.), economic order quantities, and life cycle cost considerations;

(G) When the establishment of an additional source(s) is necessary to provide production capacity to meet current and mobilization requirements, the following:

(*1*) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, such planning data;

(*2*) The comparison of current production capacity necessary to meet mobilization requirements; and

(*3*) The hazards of relying on the present source and the time required for a new source(s) to acquire the necessary facilities and skills and achieve the production capacity necessary to meet mobilization requirements.

(ii) Set forth below is the sample format for D&Fs citing the authority of FAR 6.202(a)(1).

(MILITARY DEPARTMENT OR AGENCY)

Determination and Findings

Authority to Exclude a Source

Upon the basis of the following and determination which I hereby make as agency head pursuant to 10 U.S.C. 2304(b)(1), the proposed contract action described below may be awarded using full and open competition after exclusion of (1).

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the aforementioned source.

2. The aforementioned source is the source which can be expected to receive an award for the above requirement.

3. It is necessary to establish or maintain an alternative source or sources through the use of full and open competition after exclusion of the aforementioned source.

4. The exclusion of the aforementioned source will increase or maintain competition and is likely to result in reduction of (2) in overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services. This estimate is based on (3).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization, because (4).

Alternate: The exclusion of the aforementioned source will be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center, because (5).

Determination

The exclusion of a source from the proposed contract action will increase or maintain competition and is likely to result in reduced overall costs for the acquisition or any anticipated acquisition of such supplies or services.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to have a supplier available for furnishing the above supplies or services in case of a national emergency or industrial mobilization.

Alternate: It is in the interest of national defense to exclude a source from the proposed contract action in order to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date __________.

1. Name of source to be excluded.

2. Description of estimated reduction in overall costs.

3. Description of how estimate was derived.

4. 5. Description of circumstances necessitating the exclusion of source.

206.203 Set-aside for small business and labor surplus area concerns.

206.203-70 Set-Asides for small disadvantaged business concerns.

(a) To fulfill the objective of Section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180, contracting officers may, for fiscal years 1987-89 set-aside solicitations to allow only small disadvantaged business concerns as defined at 219.001 to compete under the procedures in 219.502-72. No separate justification or determination and findings is required under this part to set-aside a contract action for small disadvantaged business.

[53 FR 5116, Feb. 19, 1988 and 53 FR 20628, June 6, 1988]

206.270 Set-Asides for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

To fulfill the objective of section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180 (see 226.7003), contracting officers may, for fiscal years 1987-89, totally or partially set-aside solicitations for the acquisition of research and studies, normally acquired from Higher Education Institutions, to allow only HBCUs and MIs, pursuant to the procedures in 226.7004 and 235.016(a)(S-70), to compete. No separate justification or determination and findings is required under this part to set-aside a contract action for HBCUs and MIs.

[53 FR 5116, Feb. 19, 1988 and 53 FR 20628, June 6, 1988]

Subpart 206.3—Other Than Full and Open Competition

206.302 Circumstances permitting other than full and open competition.

206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(S-70) Contracts for studies, analyses, or consulting services (see FAR 37.2) shall not be entered into without competition on the basis of an unsolicited proposal unless the head of the contracting activity, or a designee not lower than the chief of the contracting office, determines that:

(1) As a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work; or

(2) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(3) The purpose of the contract is to take advantage of a unique and significant industrial accomplishment by a specific concern, or to ensure that a new product or idea of a specific concern is given financial support when it benefits defense. This limitation shall not apply to contracts in amounts of less than $25,000, contracts related to improvement of equipment that is in development or production, or contracts as to which a civilian official of the DoD, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.

(b)(S-70) When acquiring test articles and associated support services from a designated foreign source under the DoD Foreign Weapons Evaluation Program, the authority of FAR 6.302-1 may be used.

(c)(S-70) The authority of FAR 206.302-1(a) shall not be used in the case of acquisitions described in FAR 206.302-1(b)(4) unless the equipment or parts have been adopted as standard items of supply in accordance with DODD Standardization Program (see DODD 4120.3 and Departmental procedures). This authority shall not be used for initial acquisitions of equipment or spare parts, or to select arbitrarily the equipment or parts of certain suppliers. (If supplies might subsequently be standardized see FAR 15.407(b)).

[51 FR 46102, Dec. 23, 1986, as amended at 52 FR 34785, Sept. 15, 1987; 53 FR 38202, Sept. 29, 1988]

206.302-2 Unusual and compelling urgency.

(b) *Application.* The following are illustrative of circumstances with respect to which the authority of 10 U.S.C. 2304(c)(2) may be used and are not intended to be all inclusive:

(1) Supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(2) Essential equipment for, or repair to, a ship when such equipment repair is needed at once for compliance with the orders of the ship;

(3) Essential equipment for, or repair to, aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft;

(4) Construction needed at once to preserve a structure or its contents from damage;

(5) Essential equipment for, or repair to, missiles or missile support equipment, when such equipment or repair is needed at once to preclude impairment of launch capabilities or mission performance; or

(6) Purchase requests citing an issue priority designator under the Uniform Material Movement and Issue Priority System (UMMIPS) of 4 or higher, or citing "Electronic Warfare QRC Priority" may justify other-than-full and open competition, but in such cases the specific circumstances must be set forth in the justification required by FAR 6.303.

206.302-4 International agreement.

(c)(S-70) *Limitations.* Pursuant to 10 U.S.C. 2304(f)(2)(E), the justifications and approvals described in FAR 6.303 and 6.304 are not required if the head of the contracting activity prepares a document, which describes the terms of an agreement or treaty or the written directions, such as a Letter of Offer and Acceptance (see FAR 6.302-4(b)), that have the effect of requiring the use of other than competitive procedures for the acquisition, and such document is approved by the competition advocate for the contracting activity.

[55 FR 19076, May 8, 1990]

206.302-5 Authorized of required by statute.

(c) *Limitations.* (1) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(i) The statute authorizing or requiring award specifically—

(A) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(B) Identifies the particular college or university involved, and

(C) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(ii) The Secretary of Defense provides Congress written notice of intent to award. The contract can not be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Assistant Secretary of Defense (Procurement).

(2) Because subsequently enacted statutes may, by their terms, require different results than provided in paragraph (c)(1) of this subsection, contracting officers should consult legal counsel on a case by case basis.

(3) The limitation in paragraph (c)(1) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

[55 FR 30157, July 24, 1990]

206.303 Justifications.

206.303-1 Requirements.

(b)(S-70) Any recommendation by technical and requirements personnel for other than full and open competition must have been reviewed and approved at an appropriate management level in accordance with agency procedures prior to submittal to the contracting officer.

206.304 Approval of the justification.

(a)(4)(S-70) For proposed contracts not exceeding $50,000,000, the senior procurement executive specified in

202.101 may delegate this authority as follows:

(A) To an officer or employee within the senior procurement executive's organization who—

(*1*) If a member of the armed forces, is a general or flag officer; or

(*2*) If a civilian, is serving in a position in Grade GS-16 or above (or in a comparable or higher position under any other schedule of civilian officers or employees); or

(B) In the case of the Under Secretary of Defense for Acquisition (USD(A)), acting in the capacity as the senior procurement executive for DoD, the USD(A) may delegate—

(*1*) An Assistant Secretary of Defense; or

(*2*) With respect to an element of DoD, other than a military department, carrying out the procurement concerned, an officer or employee serving in or assigned or detailed to that element who—

(*a*) If a member of the armed forces, is serving in a rank above brigadier general or rear admiral (lower half); or

(*b*) If a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than rear admiral.

(S-71) For proposed contracts over $50,000,000 this authority is not delegable, except in the case of the USD(A) acting in the capacity as the senior procurement executive for DoD. When acting as the DoD senior procurement executive, the USD(A) may delegate as specified in 206.304(a)(4)(S-70)(B).

[55 FR 19076, May 8, 1990]

206.305 Availability of the justification.

(a)(S-70) The requirements of FAR 6.305(a) apply to documents prepared pursuant to 206.302-4(c)(S-70).

[55 FR 19077, May 8, 1990]

PART 207—ACQUISITION PLANNING

Subpart 207.1—Acquisition Plans

Sec.

207.103 Agency-head responsibilities.
207.105 Contents of written acquisition plans.
207.106 Additional requirements for major systems.

Subpart 207.3—Contractor Versus Government Performance

207.302 General.
207.304 Procedures.
207.307 Appeals.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46103, Dec. 23, 1986, unless otherwise noted.

Subpart 207.1—Acquisition Plans

207.103 Agency-head responsibilities.

(c)(1) The formal acquisition planning provided for herein and in FAR Subpart 207.1 applies to the more complex and costly programs to procure hardware developed and produced to satisfy the need for modern military equipment. These acquisition planning requirements may also be adapted to the acquisition of all supplies and services.

(c)(2) Written acquisition plans shall be prepared for—

(i) Development acquisitions (see FAR 35.001) whose total contractual cost is estimated at $2,000,000 or more, and

(ii) Production and service acquisitions whose contractual cost is estimated at $15,000,000 for all years or $5,000,000 for any fiscal year. These plans shall include the contents described in FAR 7.105, as appropriate.

(c)(3) Acquisition plans for acquisitions described in (c)(2) (i) and (ii) above should be keyed to the Department of Defense Five Year Defense Program, applicable budget submissions, and the Decision Coordinating

Paper/Program Memorandum, as appropriate.

(c)(4) The criteria and thresholds in (c)(2) above do not preclude the preparation of written acquisition plans for any acquisition, whether short-range or long-range, when determined necessary by the Departments.

(c)(5) Acquisitions which represent a final buyout or a one-time buy are exempt from the requirements of (c)(2) and (4) above.

(c)(6) Procedures shall be established to ensure that for written acquisition plans meeting the criteria and thresholds of paragraph (c)(2) above, the program manager's industrial preparedness strategy and plan to accelerate, surge, or mobilize production has been considered in the acquisition strategy and has been documented either by text or by reference in the acquisition plan. This strategy should clearly include secondary items, spare parts, etc., necessary to support the system.

(d) Written acquisition plans meeting the criteria and thresholds of (c)(2) above, shall be prepared on a system basis covering the major items of hardware/equipment to be developed/produced including Government-furnished equipment and system support. Other acquisition plans may be written on either a system or individual contract basis.

(e) The Departments shall ensure that the principles of FAR Subpart 7.1 and this Subpart are used as appropriate.

(f) The program manager, or other official responsible for the program concerned has overall responsibility for the requisite acquisition planning as this official has for all other planning for the program. The contracting officer or the contracting officer's designee shall support this official by preparing and maintaining the acquisition plan. The contracting officer shall enlist the aid of cognizant engineering, production, logistics, quality assurance, maintenance and other functional staff business management personnel at command and subordinate buying activity levels as required. The head of the contracting activity, or the chief contracting official of the buying activity, in coordination with the program manager, must ensure that the objectives of the acquisition plan are realistic and achievable and that solicitations and contracts will be appropriately structured to equitably distribute technical, financial, and economic or business risks, consistent with the program phase of the acquisition, the technical requirements and needs of the specific program, and salient business and legal constraints. All personnel engaged in the management of the acquisition process, including program, technical and financial personnel, are essential to the comprehensive acquisition planning and preparations necessary to achieve the acquisition objectives. These personnel must be made cognizant of their responsibilities and actively participate in the development and preparation of the acquisition plan, if acquisition planning is to be successful.

(g) Acquisition plans shall be reviewed and approved in accordance with Departmental procedures.

(h)(1) *Design-to-cost criteria and thresholds.* (i) Design-to-cost principles shall be applied—

(A) in all acquisitions for major defense systems (DoD Directive 5000.1) unless exempted by the Secretary of Defense, and

(B) to the acquisition of systems, subsystems, and components below the thresholds for major defense systems to the extent prescribed in DoDD 4245.3, "Design to Cost", and in accordance with Departmental procedures.

(ii) In solicitations and contracts including design-to-cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DoDD 4105.62). This is to facilitate product development at the lowest life-cycle-cost consistent with mandatory schedule and performance requirements. (For the relationship of design-to-cost to value engineering, see FAR 48.105)

(2) *Life-cycle-cost criteria.* (i) Since the cost of operating and supporting a

system or equipment over its useful life is substantial and, in many cases, greater than the acquisition cost, it is essential that such costs be considered in development and acquisition decisions in order that proper consideration can be given to those systems or equipments that will result in the lowest life-cycle-cost to the Government. Guidelines, including representative detailed procedures for implementing life-cycle-costing are contained in the following documents:

(A) LCC-1, DoD Life-Cycle-Costing Procurement Guide (Interim);

(B) LCC-2, DoD Life-Cycle-Costing Casebook; and

(C) LCC-3, Life-Cycle-Costing Guide for System Acquisitions (Interim).

(i) The following format is illustrative of an acquisition plan and is designed merely to give guidance in the preparation of acquisition plans. It may be modified to suit the acquisition being planned as well as the phase of program formulation. The narrative portion of the acquisition plan should be brief but comprehensive. It should provide not only the background necessary to understand the acquisition but also a plan for contracting for the item or system, including the rationale and assumptions upon which the plan is predicated. It should reference other documents where applicable. The milestone chart introduces discipline into the planning process by identifying in graphic form the points at which critical decisions must be made and time factors that must be observed when action is necessary to produce an item or to make a competitive buy possible. The chart not only forces consideration of all factors involved but it also provides a visual portrayal of the decisions necessary to achieve objectives and indicates the time at which they should be made. The milestone chart portrays the step-by-step planning and normally covers the period from advance development through delivery of the production items. The chart tells the story of time, cost and quantity of required items, illustrating milestones which must be recognized in the decision making process. However, it is important to recognize that the format of the milestone chart is flexible, because the same milestones may not be present in every acquisition program.

Illustrative Acquisition Plan Format
Acquisition Plan No. ____

Program ________________________
Program Manager ________________________
Description of Program/System/Commodity, etc. ________________________

____

____

Approved: Contracting Representative ________ Date ________ Program Manager ________ Date ________

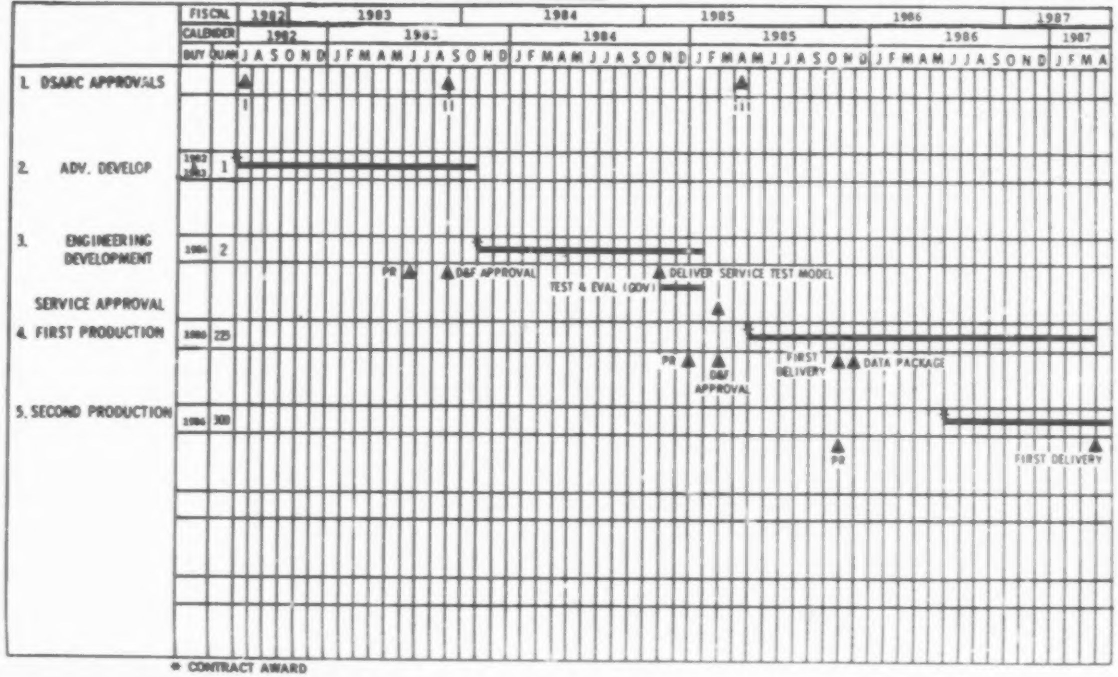
(Address each of plan content elements in FAR 207.105 (a) and (b) and 207.105, as appropriate.)

ILLUSTRATIVE MILESTONE CHART FORMAT

ACQUISITION PLAN NO. ________

ACQUISITION ITEM ____________________

ACQUISITION PLANNING CHART



(S-70) Ensuring compliance with Department of Defense Directive 4210.15, Hazardous Material Polution Prevention.

[51 FR 46103, Dec. 23, 1986, as amended at 52 FR 34786, Sept. 15, 1987; 54 FR 11724, Mar. 22, 1989; 54 FR 53616, Dec. 29, 1989]

207.105 Contents of written acquisition plans.

In addition to the contents prescribed by the FAR, acquisition plans should include the following, as appropriate:

(a) *Acquisition background and objectives.*

(a)(3) *Cost.*

(i) *Life cycle cost.* Indicate the provisions/clauses that will be used to impose Life Cycle Cost and Cost/Schedule Control System Criteria (see 234.005-70).

(ii) *Design-to-cost.* Indicate the provisions/clauses that will be used to impose Design-to-Cost and Cost/Schedule Control System Criteria (see 234.005-70).

(a)(7) *Risks.* As appropriate, discuss the effect of business base changes of major contractors' workload on program cost.

(a)(8) *Acquisition streamlining.* Policy direction on acquisition streamlining is contained in DoDD 5000.43 and Part 210 of this regulation. See MIL-HDBK 248 for guidance on streamlining performance requirements, the technical package, and the contract strategy.

(a)(S-70) *Applicability of a Decision Coordinating Paper (DCP), Program Memorandum Defense System Acquisition Review Council (DSARC), and/or internal service reviews.* Describe the options set forth in the DCP/Program Memorandum and delineate which option the acquisition plan supports. Delineate the DSARC and/or internal service reviews on the milestone chart.

(a)(S-71) *Approval for operational use.* Indicate the date approval for operational use has been or will be obtained. If waivers are requested, describe the need for the waivers.

(a)(S-72) *Milestone chart attachment depicting the objectives of the acquisition.* Provide a chart in general accordance with the sample milestone chart at 207.103(i).

(a)(S-73) *Milestones for updating the acquisition plan.* Indicate when the plan will be updated. Updates should be scheduled to coincide with DSARC reviews and the transition from one phase to another (full-scale development to production).

(b) *Plan of action.*

(b)(5) *Budgeting and funding.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and the total cost for remaining production.

(b)(6) *Product descriptions.* For development acquisition, describe the market research efforts planned or undertaken to identify nondevelopmental items (see 210.001) that could satisfy the acquisition objectives.

(b)(12) *Logistics considerations.*

(i) Describe the extent of integrated logistic support planning to date, including references to approved plans.

(ii) In discussing the reliability and maintainability (R&M) objective, including warranties, discuss the mission profile, R&M program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

(iv) See DoDD 4120.3 for procedures relative to standardization, DoDI 4120.19 for procedures relative to the DoD Parts Control Program, and Military Standard MIL-STD-965, Parts Control Program, for procedures relative to the Standardized Military Drawing Program.

(v) Describe the extent of Computer-Aided Acquisition and Logistics Support (CALS) implementation (see MIL-STD-1840A).

(b)(17) *Industrial Preparedness (IP).*

(i) Provide the program's IP strategy that assesses the capability of the US Industrial Base to achieve identified surge and mobilization goals. If no IP strategy has been developed, provide supporting rationale for this position.

(ii) If in the IP strategy, the development of a detailed IP plan was determined to be applicable, include the plan by text or by reference. If the development of the IP plan was determined to be not applicable, summarize the details of the analysis forming the basis of this decision.

(iii) If the program involves both peacetime and wartime hardware configurations which are supported by logistic support plans, identify the impact of these plans on the IP plan.

(b)(S-70) *Acquisition approach for each proposed contract.* If not elsewhere described in the plan, describe the acquisition approach for each proposed contract, including the following, as appropriate.

(i) Item description.

(ii) Estimated cost.

(iii) Proposed sources and basis for selection.

(iv) Source selection procedures. If formal source selection procedures will be used, discuss milestones for development of the plan and provide a general overview of how the selection is to be conducted.

(v) Contract type. Provide rationale for recommendation of contract type.

(vi) Other than full and open competition authority recommended. Discuss basis for recommendation of other than full and open competition exception (see FAR 7.105(b)(2)).

(vii) Repurchase data. Provide a complete discussion of use of repurchase data to increase competition, including funding available for repurchase data and the contractual approach to acquiring such data, including proprietary rights and patent considerations.

(viii) Incentives. When appropriate, discuss plans for providing for incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

(ix) Alternative acquisition approaches considered. Briefly discuss the merits and shortcomings of other approaches.

(x) Milestones for the contract cycle. Address those steps in FAR 7.105(b)(18) and any others, as appropriate.

(xi) *Spares Acquisition Integrated With Production (SAIP).* Specifically address consideration of the SAIP concept and plans for implementation during the full-scale development and production phases of the program. (See 217.72-5 and DoDI 4245.12.)

(xii) Other considerations, as applicable.

[51 FR 46103, Dec. 23, 1986, as amended at 52 FR 34787, Sept. 15, 1987; 53 FR 35201, Sept. 12, 1988; 53 FR 38174, Sept. 29, 1988; 54 FR 7427, Feb. 21, 1989; 54 FR 11724, Mar. 22, 1989; 54 FR 31038, July 26, 1989; 54 FR 53616, Dec. 29, 1989]

207.106 Additional requirements for major systems.

(b)(1) 10 U.S.C. 2305(d)(4)(A) provides that, except where the Government is otherwise entitled to unlimited rights in technical data (see 227.472-3(a)), in solicitations for development or production of major systems, the contracting officer shall not require offers that would enable the Government to use technical data to competitively reprocure identical items or components of the major system if the item or component was developed exclusively at private expense, unless the contracting officer determines that:

(i) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements; or

(ii) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs.

(2) 10 U.S.C. 2305(d)(4)(B) provides in part that for competitive solicitations, if offers referred to in paragraph (b)(1) above are required, the evaluation of items developed at private expense (other than items for which the Government is otherwise entitled to unlimited rights in technical data) shall be based on an analysis of the total value, in terms of innovative design, life-cycle costs, and other pertinent factors, of incorporating such items in the system.

[54 FR 20591, May 12, 1989]

Subpart 207.3—Contractor Versus Government Performance

207.302 General.

(d) DoD activities shall not convert a commercial activity to performance by a private contractor without having first conducted a full cost comparison which demonstrates that contract performance is more economical unless:

(1) The commercial activity is performed exclusively by military personnel, there is adequate competition and reasonable prices can be obtained from qualified commercial sources, or

(2) The commercial activity involves 45 or less DoD civilian employees. (See section 1221, Pub. L. 99-661.) When this situation applies, refer to DoDD 4100.5 and DoDI 4100.33 for further guidance.

[51 FR 46103, Dec. 23, 1986, as amended at 52 FR 34787, Sept. 15, 1987]

207.304 Procedures.

(a)(3) In addition to the FAR requirement for the contracting officer to review the Performance-Oriented Work Statement (PWS), the contracting officer shall work in conjunction with the functional activity in the preparation of the PWS.

207.307 Appeals.

(b) The contracting officer shall forward requests for review of any discrepancy in the cost comparison to the preparer of the in-house cost estimate, for consideration in accordance with departmental procedures.

Subpart 207.4—Equipment Lease or Purchase

207.401 Acquisition considerations.

(a) The contracting officer shall obtain rationale, as prescribed by FAR 7.401 and 7.402, supporting the decision to lease or purchase from the requiring activity. This rationale shall be retained in the contract file.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

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208.7901 Applicability.
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208.7903 Waiver procedures for contracts of 12 months or less.
208.7904 Waiver procedures for contracts exceeding 12 months.
208.7905 Solicitation provision of contract clause.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46105, Dec. 23, 1986, unless otherwise noted.

208.002 Use of other government supply sources.

(f) Examples of strategic and critical materials which are in excess of national stockpile requirements are metals, ores, chemicals and similar raw material items. They are listed and described in a GSA Bulletin which is disseminated to contracting activities through Departmental channels. Detailed information on these excess materials is available from the Property Management and Disposal Service, General Services Administration, Washington, DC 20405.

(g) It is the policy of the Department of Defense (see Pub. L. 86-777) to obtain its requirement of helium as follows:

(1) Bulk helium requirements (tank car lots) shall be acquired either directly from the Department of Interior (Bureau of Mines) or from private helium distributors which establish and maintain their eligibility in accordance with Bureau of Mines Regulations. Copies of the current list of eligible private helium distributors may be obtained from the Bureau of Mines, Helium Operations, P.O. Box H4372 Herring Plaza, Amarillo, Texas 79101;

(2) Helium in cylinders or trailers shall be acquired from the Department of Interior (Bureau of Mines) either direct or through General Services Administration Federal Supply Schedule contracts.

[51 FR 46105, Dec. 23, 1986, as amended at 53 FR 38179, Sept. 29, 1988]

208.002-70 Acquisition from the Department of Energy (DOE).

(a) *General.* This subpart covers the acquisition of material and supplies from the DOE.

(b) *Acquisition of radioisotopes and enriched stable isotopes.* (1) DOE F Form 5400.3, "U.S. DOE Isotope Order Blank", and NRC Form 313, "NRC Application for Byproduct Material License", shall be used for the acquisition of radioisotopes and enriched stable isotopes from any of the DOE laboratories. No other type of order blank, purchase order, or contract shall be used in lieu of these forms.

(2) In the acquisition of radioisotopes, NRC Form 313 shall be filed with the Chief, Materials Licensing Branch Division of Fuel Cycle and Material Safety, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, NRC Form 374, "U.S. Nuclear Regulatory Commission Byproduct Materials License," will be issued to the applicant by the Radioisotopes Licensing Branch, Nuclear Regulatory Commission. After receipt of the NRC Form 374, a complete DOE F Form 5400.3 (in duplicate, if the contracting office desires to receive an accepted copy of the form back from the supplier), the license (NRC Form 374), and a Standard Form 1103, "U.S. Government Bill of Lading", shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(3) The "Terms and Conditions" on the reverse side of the DOE F Form 5400.3 shall control all requisitions for radioisotopes and enriched stable isotopes acquired by the Departments from the DOE National Laboratories.

(4) NRC Form 313, "NRC Application for Byproduct Material License", shall be requisitioned directly from: United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555. DOE F Form 5400.3 shall be requisitioned directly from: Oak Ridge

National Laboratory, Isotope Distribution Office, P.O. Box X, Oak Ridge, TN 37330 (commercial telephone 615-574-6984) or Mound Facility, Monsanto Research Corporation, P.O. Box 32, Miamisburg, OH 45342 (commercial telephone 513-865-3501).

208.070 Industrial preparedness production planning.

(a) *Scope of subpart.* This subpart establishes uniform procurement policy guidance and procedures for the Department of Defense in planning with industry for the establishment and retention of industrial base capability essential to national defense for production during periods of national emergencies.

(b) *Definitions.*

Emergency (National) means a condition declared by the President or Congress by virtue of powers previously vested in them which authorizes certain emergency actions to be undertaken in the national interest. Actions to be taken may include partial or total mobilization of national resources.

Industrial Base means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States, its territories and possessions, as well as capacity located in Canada, expected to be available during emergencies to manufacture and repair items required by the military services.

Industrial Preparedness Planning means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

Planned (or Planning) Item means any item selected for industrial preparedness planning under the criteria of DoD Instruction 4005.3, "Industrial Preparedness Production Planning Procedures."

Planned Producer means an industrial firm which has indicated its willingness to produce specified military items in a national emergency by completing an Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

(c) *General.* The Industrial Preparedness Production Planning (IPPP) program is conducted jointly among DoD components and industry to provide a means for correlating industrial capabilities and military requirements for the orderly retention, improvement, and rapid application of industrial capability to military production during an emergency.

(d) *Policy.* (1) The Department of Defense will conduct Industrial Preparedness Production Planning to assure capability for the sustained production of essential military items to meet the needs of the U.S. and Allied Forces during an emergency.

(2) In planning for the production of selected items, preference shall be given to the use of privately-owned facilities, so as to minimize the need for Government investment. Government-owned production facilities will be included in the industrial base only when:

(i) private industry is unable or unwilling to provide the facilities necessary to support DoD requirements; or

(ii) they are determined to be necessary for reasons of national security or to assure a quick response capability to meet fluctuating or job lot demands.

(3) Current procurements will be integrated, when applicable, with Industrial Preparedness Production Planning requirements.

(e) *Limitations.*

(1) Industrial Preparedness Production Planning will be limited to those weapon systems and items selected by the Military Departments and DLA in accordance with policy established in DoDI 4005.3, "Industrial Preparedness Production Planning Procedures."

(2) Industrial Preparedness Production Planning with foreign sources, except Canada, is prohibited.

(f) *Existing authority affecting the industrial base.* Specific authority under current contracting procedures to accomplish industrial planning actions includes the following:

(1) Leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947 as codified in 10 U.S.C. 2667;

(2) Acquisitions in the interest of national defense under FAR 6.202(a)(2), or in case of a national emergency or to achieve industrial mobilization under FAR 6.302-3.

(3) Obtaining Jewel Bearings Miniature and Instrument Ball Bearings, Precision Components for Mechanical Time Devices, High Purity Silicon, and High Carbon Ferrochrome (HFC) (see FAR 8.2, and 208.73, 208.74, 208.75 and 208.76 of this Supplement).

(4) Use of multiyear contracts (see FAR 17.1 and 206.202(a)(2) and 206.302-3);

(5) Providing Government production and research property to contractors (see FAR 45.302-1); and

(6) Preservation of domestic industrial base (see FAR Part 25).

(g) *Applicable procedures.* To assure the most effective planning approach, each DoD component will determine the specific type and depth of Industrial Preparedness Production Planning for each planning item. One or more of the authorities listed above may be appropriate to accomplish a particular planning action. Specific procedures as applicable to a current contract action include:

(1) Solicitation of Planned Producers in all acquisitions over the small purchase threshold established in FAR Part 13 of items for which they have signed industrial preparedness agreements (but see FAR 19.5 and 220.7003 of this Supplement as pertain to partial set-asides for small business and labor surplus area concerns);

(2) Procedures under FAR 6.202(a)(2) or 206.302-3 to effect an industrial planning requirement; and

(3) When determined necessary by the applicable DoD component, individual service contracts may be awarded for accomplishing industrial planning efforts for selected essential military items. These efforts may include but are not limited to the maintenance of Government-owned industrial facilities (real and personal property); including production data packages; and

(4) When it is determined necessary to contract for an Industrial Preparedness Production Planning effort, and an item selected for such planning is being acquired, a line item for the planning services and data will be included in the contract schedule. The schedule shall describe in detail the required end items of supply, the specific services, and data by separate line items (see 204.71).

[51 FR 46105, Dec. 23, 1986, as amended at 53 FR 38246, Sept. 29, 1988; 54 FR 14234, Apr. 10, 1989]

Subpart 208.1—Excess Personal Property

208.102 Policy.

In accordance with Department of Defense Directive (DoD) 4140.39, Dod inventory control points are required to check applicable disposal system management information records to determine if suitable excess or surplus assets are available and can meet customer requirements in a timely and economical manner before proceeding with purchase actions. The contracting officer may assume that a check of the disposal system records has been made by requirements personnel prior to their issuing of the purchase request.

[52 FR 34787, Sept. 15, 1987]

Subpart 208.3—Acquisition of Utility Services

See Supplement No. 5, Procurement of Utilities Services.

Subpart 208.4—Ordering From Federal Supply Schedules

208.404-1 Mandatory use.

(a) *Urgent requirements.* If delivery is offered in a shorter time than the maximum stated in the Schedule, but later than that required by the purchase request, the contracting officer shall ascertain from the activity initiating the purchase request whether the offered delivery is acceptable. This procedure need not be followed when transportation time from the contractor's shipping point or time required for inquiry and reply make conformance impracticable.

[51 FR 46105, Dec. 23, 1986, as amended at 53 FR 38174, Sept. 29, 1988]

208.404-2 Optional use.

(a)(S-70) As specified in FAR 8.001(a), optional schedules are preferred sources of supplies and services. Accordingly, contracting officers should make maximum use of optional schedules in meeting requirements for supplies and services. Further competition with respect to optional schedules is not required. However, if, in the contracting officer's judgment, the introduction of competition from nonschedule sources would be in the best interest of the Government in terms of quality, responsiveness, or costs, other procedures may be used.

[52 FR 34787, Sept. 15, 1987]

208.404-3 Requests for waivers.

(a) If such waiver is not granted, the case shall be referred to the Head of the Contracting Activity or his deputy, or to such higher authority as may be required by the Departments, and in the case of the Air Force, Commanders of AFLC Air Logistics Centers who shall make the final decision as to whether the nonschedule item will be purchased and shall promptly notify the Commissioner, Federal Supply Service, and the Purchasing Office, of the decision reached.

(b) When supplies or services are to be acquired from other sources and the situation will not permit the delay incident to following the normal channels of obtaining a waiver from the General Services Administration prior to purchase, such waiver shall not be requested. In emergency situations, the head of the office initiating the purchase request, or his designated representative, shall furnish to the purchasing office a signed statement identifying the supplies or services to be acquired, and explaining why similar items listed in the applicable Federal Supply Schedule will not meet the specific requirements. The purchasing office shall, within 15 days of the date of purchase, furnish such statement to the Commissioner, Federal Supply Service, General Services Administration.

208.404-70 Applicability of listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense until expired (see list for expiration date). Except for Group 68, gases and chemical, and services for which DoD provides annual requirement estimates (see 208.470-6), DoD will not be listed as a mandatory user on any future Federal Supply Schedules. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see 208.470-6 for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
10/01/87	19 I	1940, 1945, 2010/2805	Small Craft Marine and Floating Barriers	
11/01/87	25 I	2520, 2530, 2540	VEHICULAR EQUIPMENT COMPONENTS—tire chains and clutch facings.	
05/01/88	26 II	2610	PNEUMATIC TIRES AND INNER TUBES—Highway, off-highway industrial, pursuit/emergency high speed passenger, and agriculture.	

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
07/01/88	36 II	3610, 3615	SPECIAL INDUSTRY MACHINERY—lithographic printing plates (masters) and solutions, spirit duplication, thermal process, printing, duplicating, and bookbinding equipment, and pulverizing, pulping, and shredding machines	Except Special Item No. 51-1, 51-1-1, 51-1-3, 51-2, 51-46, 51-106, 51-107, 51-108, 51-110, 51-111, 51-113, 51-114, 51-125, 51-125-1, 51-126
10/01/90	36 IV	3610	SPECIAL INDUSTRY MACHINERY—copying equipment, supplies and services	Except Special Item No. 51-43, 51-44, 51-45, 51-52, 51-53, 51-54
03/01/88	37 II A	3750	LAWN AND GARDEN EQUIPMENT—lawn mowers, mowers, shredders, edgers, trimmers, roto-tillers, broadcast spreaders, sprayers, vacuums, sweepers, tractors, and accessories	
08/01/87	45 VII A	4520	PLUMBING AND HEATING EQUIPMENT—domestic water heaters, gas and electric	
07/01/88	45 VIII A	4540	PLUMBING AND SANITATION EQUIPMENT—household garbage disposers, ⅓ and ½ horsepower	
04/01/88	51 I A	5130, 5133, 5180	HAND AND POWER TOOLS—pneumatic, hydraulic, power actuated, gasoline engine, and special purpose drill bits	
06/01/88	51 IV	5110, 5120, 5136, 5140, 5210	HAND AND POWER TOOLS—nonpowered tools	
06/01/88	61 I	6140	BATTERIES—6- or 12-volt lead-acid automotive storage	
02/01/89	61 III	6135	BATTERIES—dry cell	Except Index Numbers 5, 13-22
05/01/88	62 I	6230	LIGHTING FIXTURES AND LAMPS—household and quarters use	
10/01/87	62 III	6240, 6250, 6750	ELECTRIC LAMPS—fluorescent and incandescent, and fluorescent adapters	
10/01/87	62 & 67	6240, 6750	LAMPS—electrical and photographic	
10/01/87	66 I B	6650, 6675	INSTRUMENTS AND LABORATORY EQUIPMENT—electronic distance measuring equipment and magnifiers	Except Air Force
10/01/87	66 II A	6630	INSTRUMENTS AND LABORATORY EQUIPMENT—blood analysis systems, diluters, pipettes, electrophoresis equipment	Except Air Force.
05/01/90	66 II B	6515, 6630, 6640, 8125	INSTRUMENTS AND LABORATORY SUPPLIES—glass, plastic, and metal laboratory ware; laboratory distillation and demineralizing systems; vena puncture products for blood specimen collection; and prescription bottles	
02/01/89	66 II C	6630, 6640, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—microscopes, centrifuges, pH meters, microtomes, stirrers, shakers, stereoscopes, monoculars, and titrators/titration systems	
01/01/88	66 II E	6670	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory balances, precision scales and accessories	

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
08/01/88	66 II H	5915, 5985, 6625	INSTRUMENTS AND LABORATORY EQUIPMENT—amplifiers, microwave and low frequency instruments, and RF components.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
05/01/90	66 II M	6625, 6630, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—spectrophotometers, densitometers, liquid scintillation systems, multi-channel pulse height analyzers, spectrometers, photometers, and polarograph analysis equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
06/01/88	66 II N	6630, 6635, 6640, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—analyzers, chromatographs, colony counters, blood analysis systems diluters, pipettes, electrophoresis equipment, and image analysis systems.	Not mandatory for Dept. of the Air Force.
04/01/88	66 II O	4110, 6530, 6636, 6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory apparatus, and laboratory and clinical refrigerators and freezers.	
02/01/88	66 II P	6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory and pharmacy furniture.	
12/01/88	66 II Q	6625, 6630, 6640, 6655, 6660, 6680, 6685	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis equipment, pollution, oceanographic and weather.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
02/01/90	66 II R	6625, 6665, 6680	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis, pollution control air bag and detecting equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
08/01/88	66 II S	6630, 6640, 6670	INSTRUMENTS AND LABORATORY EQUIPMENT—glassware and scales.	
02/01/88	67 II B	6635, 6750, 6720, 6740	PHOTOGRAPHIC SUPPLIES—film, chemicals, and photographic paper.	
10/01/88	67 IV B	6720, 6730, 6740, 6750, 6760.	MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES—cameras, projectors, printers, developing and duplicating equipment, and chemicals, film, and paper.	Except SINs 21-4-1a, b & c, 21-4-2a, b & c, 21-4-3a, b & c, 21-50a, 50b, 21-26, 26a.
	68 III E & F	6830	CHEMICALS AND CHEMICAL PRODUCTS—refrigerant fluorocarbons and sulfur hexafluoride.	
	68 III G	6830	CHEMICALS AND CHEMICAL PRODUCTS—helium.	

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
	68 III H	6830	CHEMICALS AND CHEMICAL PRODUCTS—fire extinguishing fluorocarbons.	
07/01/88	71 I B	7105	HOUSEHOLD AND QUARTERS FURNITURE—danish style.	Except SINs 29 through 38.
02/01/88	71 I C	7105	HOUSEHOLD AND QUARTERS FURNITURE—traditional style.	
01/01/88	71 I D	7105	HOUSEHOLD AND QUARTERS FURNITURE—dormitory and quarters.	Except items 1-57 and items 92-100.
05/01/88	71 I E	7105	HOUSEHOLD AND QUARTERS FURNITURE—upholstered (performance tested) furniture.	
11/01/88	71 II B	7110	OFFICE FURNITURE—executive traditional, unitized and contemporary, wood.	
07/01/88	71 II C			
10/01/88	71 II E	7110	OFFICE FURNITURE—systems furniture	
09/01/87	71 III B	7195	MISCELLANEOUS FURNITURE—library, wood, or metal.	
02/01/88	71 III C	7125	MISCELLANEOUS FURNITURE—storage cabinets for forms and flammable liquids.	
10/01/87	71 III D	7110, 7125	MISCELLANEOUS FURNITURE—mail sorting and distribution equipment, modular cabinets for high and low density storage, and molded plastic/corrugated storage bins.	
02/01/88	71 III E	7110	MISCELLANEOUS FURNITURE—insulated and uninsulated security filing cabinets, safes, vault doors, and map and plan files.	
11/01/88	71 III F	6530, 7105, 7210, 7230	MISCELLANEOUS FURNITURE—hospital patient room.	Except items 482-7 and 482-8.
02/01/88	71 III H	7105, 7110	MISCELLANEOUS FURNITURE—multi-purpose seating.	
05/01/88	71 III J	7125	MISCELLANEOUS FURNITURE—steel vertical blueprint filing cabinets, roll drawing files, and high-density movablé shelf filing cabinet systems.	
07/01/90	71 III K	7125	MISCELLANEOUS FURNITURE—special purpose	
10/01/87	71 III L	7110	MISCELLANEOUS FURNITURE—cafeteria and food service.	
05/01/88	71 III M	7195	MISCELLANEOUS FURNITURE—acoustical partitions, speech privacy partitions, and vertical surface panels.	Except items 500-2, 500-3, and 500-4.
04/01/88	71 III N	7045, 7110	MISCELLANEOUS FURNITURE—ADP furniture, storage and transportation items.	
10/16/87	71 III O	7105, 7195	MISCELLANEOUS FURNITURE—folding chairs and tables.	
01/01/88	71 V B	7110, 7125	OFFICE FURNITURE—key cabinets	
08/01/87	71 V D	7105, 7110	OFFICE AND FIELD FURNITURE—office furniture, map and plan filing cabinets and folding tables, modular steel field office furniture: filing cabinets, desk top, and end folding table.	
06/01/88	71 XIV A	7110, 7125, 7195	SHOP FURNITURE—desks, benches, and tables	
10/01/87	72 I	7220	HOUSEHOLD AND COMMERICAL FURNISHINGS—carpets, special purpose carpets, rugs, carpet tiles, and carpet cushions.	Not mandatory for use aboard vessels.
02/01/88	72 I E	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—mats and matting, entrance-way, interlocking modular, resilient open construction and anti-static types.	Not mandatory for use abroad vessels.
09/01/87	73 IV B	7310	APPLIANCES—household and commercial electric ranges.	
10/01/89	74 I A	7430	OFFICE MACHINES—electronic typewriters, visual display preparation devices, sound reduction equipment and electric typewriter supplies.	
12/01/87	74 I B	7430	OFFICE MACHINES—typewriters, electric, single element.	

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
12/01/87	74 I C	7450	OFFICE MACHINES—dictating and transcribing equipment.	
07/01/89	74 II & III	6645, 7420, 7490	OFFICE MACHINES—adding, calculating, cash registers, time measuring instruments, miscellaneous office machines.	
09/01/87	74 II A	7420	OFFICE MACHINES—calculators, desk top nonprogrammable.	
04/01/88	74 IV	7460	VISIBLE RECORD EQUIPMENT—control boards, files and frames.	Not mandatory on DoD for rental, repair and maintenance.
01/01/88	75 I C	7530, 9310	OFFICE SUPPLIES—special use paper, engineering and draftsman papers—graph, drawing, tracing, overlay plastic sheets, cardboard and paper embossing, index sheet sets for looseleaf binders; paperboard, drawing, and labels for automatic data processing.	
09/01/87	75 I D	7530	OFFICE SUPPLIES—plotting paper, supplies, and recording paper.	
03/01/90	75 II A	3540, 7510, 7520, 7690, 7530.	OFFICE SUPPLIES—pencils, leads, tape label marking, chart supplies and/or letters and figures, sorters, desk correspondence, file suspended folders, plastic book jackets, plastic organizers and sorters, out-of-typewriter correction material, labels, price marking equipment, data binders, binders, looseleaf, typewriter ribbons, word processing ribbons, correction tape, computer ribbons, computer print-out ruler, plastic copyholder, and print wheels.	
09/01/88	75 II B	3540, 7510, 7520	OFFICE SUPPLIES—looseleaf binders, label tape, pamphlet files, multi-strike typewriter ribbons, typewriter correction tape, pressure sensitive adhesive tape, correctable typewriter ribbons, plastic desk trays, lead holders, document protector, typist copyholders, gummed tape dispensers, file drawer frames, stapling machines, bristol cardboard, labeling machines.	
05/01/88	75 IV A & B	7520	OFFICE SUPPLIES—rubber stamps	
05/01/90	75 IV C	7520	OFFICE SUPPLIES—pre-inked rubber stamps	
12/01/87	75 V	7530	OFFICE SUPPLIES—envelopes: mailing, printed and plain.	Mandatory except for plain envelopes for use in the District of Columbia.
04/01/88	75 VIII A	7530	OFFICE SUPPLIES—cards; tabulating, aperture, and copy.	
03/01/88	75 X	7530	OFFICE SUPPLIES—xerographic paper	
10/01/87	75 XI	7530	OFFICE SUPPLIES—xerographic paper and thermal copy paper.	
11/01/87	75 XII	7530	OFFICE SUPPLIES—electrographic paper	
02/01/89	76 I	7610, 7640	PUBLICATIONS—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	
10/01/87	76 II	7610, 7630, 7670	PUBLICATIONS—law, tax, and reporting periodicals, microfilm library systems.	Except SINs 37-5, 6, and 7.
10/01/89	77 III	7105, 7730	AUDIO AND VIDEO EQUIPMENT—televisions, radios, phonographs and video cassette recorders.	
01/01/90	78 I A	7810	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor equipment.	
09/01/89	78 I C	7830	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor recreational equipment.	

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
12/01/87	79 I A	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
03/01/90	79 I B	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
04/01/89	79 II A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered dishwashing compounds with contractor supplied, installed and maintained accessory dispensing systems.	
05/01/88	79 III A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered laundry detergents with contractor supplied, installed and maintained accessory dispensing systems.	
12/01/87	81 I A	8135	PACKAGING AND PACKING SUPPLIES—cushioning material.	
07/01/88	81 II A	8135	PACKAGING AND PACKING SUPPLIES—steel and nonmetallic strapping.	
03/01/89	99 VI A	9910	TROPHIES AND AWARDS—trophies, awards, plaques, pins, and ribbons.	
05/01/89	99 V A	9905	RECRUITING AID PROMOTIONAL MATERIAL	For requirements of recruiting commands only

In addition to these National Federal Supply Schedules, there are Regional Schedules (chiefly covering various services) which are mandatory in the region covered. Activities should check with local GSA Region offices for listings of regional schedules applicable in their area.

[52 FR 33411, Sept. 3, 1987; 52 FR 34866, Sept. 15, 1987]

208.404-71 Establishment or revision of Federal Supply Schedules mandatory upon DoD.

(a) *Policy.* The Administrator of General Services Administration has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense, or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense, or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year, except where—

(1) The item is a part or accessory incidental to a basic item;

(2) The item is a component of a unit assembly;

(3) The item has a demonstrated need to fill out a range of colors, sizes or other characteristics; or

(4) The item involves a contract for services.

(b) *Procedures.* Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded to the Executive Director, Contracting, Defense Logistics Agency, for coordination with the Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of 35 days for consideration should be anticipated. These proposals will be distributed to the representatives of the Departments and General Services Administration engaged in the Federal

Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Manpower, Installations and Logistics) for resolution.

208.405 Ordering office responsibilities.

208.405-1 Ordering from Multiple-Award Schedules.

(c) When purchase of an item of foreign origin is specifically required, the using activity shall furnish the contracting activity sufficient information to permit the determination required by FAR part 25 to be made.

208.405-2 Order placement.

DD Form 1155 is authorized for use to place orders against Federal Supply Schedules.

(S-70) *Oral orders not to exceed small purchase threshold.*

(1) *General.* Contracting offices are authorized to make acquisitions not in excess of the small purchase threshold established in FAR part 13 by oral orders from Federal Supply Schedule contractors. Ordering activities shall obtain an agreement from the contractor that for each shipment under an oral order the contractor will furnish a delivery ticket, in the number of copies required by each purchasing office, which shall contain the following information:

(i) Contract number;

(ii) Order number under the contract;

(iii) Date of order;

(iv) Name and title of the person placing order;

(v) Itemized listing of supplies or services furnished; and

(vi) Date of delivery or shipment.

(2) *Payment.* Optional methods of invoicing are permissible. An individual invoice accompanied by a receipted copy of the related delivery ticket may be submitted for payment. Alternatively, a summarized monthly invoice covering all oral orders made during the month, accompanied by a receipted copy of each delivery ticket or a statement by the contracting officer that the supplies have been received by the Government, may be submitted for payment. The monthly billing procedure is preferred when numerous oral orders may be placed.

(S-71) *Imprest funds (petty cash method).* In buying commodities where cash payment is advantageous, the imprest funds method (see FAR 13.4) is authorized; *Provided,* the order does not exceed $500, and the contractor agrees to such a procedure.

[51 FR 46105, Dec. 23, 1986, as amended at 53 FR 38246, Sept. 29, 1988; 54 FR 16115, Apr. 21, 1989; 54 FR 30740, July 24, 1989]

208.470 Acquisition from GSA Sources.

208.470-1 Applicability.

This section applies to the acquisition of supplies available from General Services Administration stock for delivery in the contiguous United States, including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments. This section may be applied optionally in Alaska and Hawaii. It does not apply in any event to any order which amounts to $25.00 or less, or to:

(a) Any subsistence or medical item which is under the cognizance of the Defense Personnel Support Center;

(b) Any item which is being purchased for resale; or

(c) Any item used by commissaries for operation and maintenance that is available through local purchase at a price lower than from GSA stock.

This section also applies to the mandatory use of General Services Administration services and term contracts for the maintenance, repair, rehabilitation, and reclamation of all personal property described in 208.470-6, in the United States, Puerto Rico and the Virgin Islands. Services of this type which are available from Federal Prisons Industries and Agencies for the Blind will be procured under the provisions of FAR Subparts 8.6 and 8.7.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 30740, July 24, 1989]

208.470-2 Acquisition from General Services Administration stock.

Items available from the stock system of the General Services Administration which are in Federal Supply Classes (FSCs) assigned to GSA for management should be acquired in accordance with the requirements of Subpart 208.71. DoD policy regarding use of GSA stock items in classes other than those assigned to GSA for managemet is that maximum use of such items should be made *except* in cases where requirements are met by items managed by DLA or the Military Departments. In addition, other sources may be used, provided:

(a) Such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement;

(b) For purchases exceeding $100 per line item, a statement of the specific advantage or advantages of the locally purchased item is included in the purchase file;

(c) For purchases exceeding $1,000 per line item, the statement of the specific advantage or advantages of the locally purchased item is reviewed and approved one level above the contracting officer;

(d) For purchases exceeding $5,000 per line item, a waiver request is forwarded to and approved by GSA prior to initiation of the purchase action.

[53 FR 1924, Jan. 25, 1988]

208.470-3 GSA Supply Catalog.

The General Services Administration Supply Catalog sets forth, among other things, information with respect to some of the items of supply carried in stock, prices, and delivery information, and a listing of the General Services Administration regional offices. The catalogs do not list all of the items carried in stock. Items within the classes assigned to GSA in accordance with DoD/GSA agreements and not recorded in the management data lists of the Federal catalog publications as managed by another service or agency and not recorded for decentralized acquisition, should be requisitioned from GSA. Copies of the GSA Supply Catalog may be obtained by completing GSA Form 457 (FSS Publications Mailing List Application) and mailing it to the GSA Centralized Mailing Lists Service, Building 41, Denver Federal Center, Denver, Colorado 80225. GSA Form 457 may be obtained from the GSA Centralized Mailing Lists Service by letter or by telephoning 303-234-4195.

208.470-4 General Services Administration regional offices.

The General Services Administration regional offices, located in the cities listed below, serve the areas indicated in the GSA Supply Catalog guide. The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region and Address

(a) Boston, MA—John W. McCormack, Post Office & Courthouse, Boston, MA 02109.

(b) New York, NY—26 Federal Plaza, New York, NY 10007.

(c) Philadelphia, PA—Ninth & Market Streets, Philadelphia, PA 19107.

(d) Atlanta, GA—75 Spring Street, SW, Atlanta, GA 30303.

(e) Chicago, IL—230 S. Dearborn Street, Chicago, IL 60604.

(f) Kansas City, MO—1500 East Bannister Road, Kansas City, MO 64131.

(g) Fort Worth, TX—819 Taylor Street, Fort Worth, TX 76102.

(h) Denver, CO—Denver Federal Center, Bldg. 41, Denver, CO 80225.

(i) San Francisco, CA—525 Market Street, San Francisco, CA 94105.

(j) Auburn, WA—General Services Administration Center, Auburn, WA 98002.

(k) National Capital—7th & D Streets SW., Washington, DC 20407.

208.470-5 Order for supplies.

Orders for supplies from the General Services Administration shall be submitted in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4140.17-M).

208.470-6 Mandatory Sources for Maintenance, Repair, Rehabilitation and Reclamation of Personal Property.

General Services Administration regional offices provide facilities for maintenance, repair, rehabilitation and reclamation of Government-owned personal property and, in addition, have Term Contracts with commercial concerns for similar services. These contracts are published as General Services Term Contracts. When requirements exceed the in-house capabilities of a Departmental activity or installation, or it is otherwise required that outside sources be used, mandatory General Services Administration sources for such services shall be used except when:

(a) The items involved are military weapons systems, specialized military support equipment, or specialized technical or scientific equipment;

(b) Such services are available from the Agencies for the Blind or Other Severely Handicapped;

(c) The required services are covered by warranty or other preexisting contract;

(d) Delivery requirements for repair and refinishing services cannot be met (the provisions of FAR 8.404-1 are applicable when determining whether a General Services Administration source can meet the delivery requirements);

(e) The required services are not within the scope of the existing mandatory GSA Term Contract or a waiver is first obtained from the appropriate GSA Federal Supply and Services contracting office (such waivers are not required when the exigency of the contract action will not permit delay; however, telephonic clearances will be given by GSA in appropriate cases); and

(f) The requiring activity is outside the geographic area covered in the GSA Term Contract. (Normally, this area extends no more than a 15-mile radius from the contractor's location. Each contract specifies the area covered which may in some cases extend beyond that distance.)

208.470-7 Personal property covered under mandatory GSA term contracts.

The items of personal property listed below are indicative of those for which General Services Administration sources are mandatory for maintenance, repair, rehabilitation, and reclamation services. They are not all inclusive. For detailed listings, see the latest Federal Supply Catalog entitled "Guide to Sources of Supply and Service." Copies are available from GSA Regional Offices and should be obtained by each installation and activity that may have need of such services. Copies of existing GSA Term Contract for these services are routinely forwarded by each GSA Regional Office to all affected Government activities within the respective regions.

SAMPLE LIST OF ITEMS

Adders, calculators, and comptometers
Fire extinguishers (Industrial and Commercial)
Furniture (office, household, quarters, institutional and hospital type)
Household appliances
Mattresses
Motors and generators (Industrial and Commercial)
Tires (except for aircraft)
Typewriters (manual and electric)
Watches and clocks (Industrial and Commercial)

208.470-8 Order for services.

Orders for maintenance, repair, rehabilitation, or reclamation services from General Services Administration sources shall be placed as follows:

(a) *GSA repair facility.* A delivery order on Order for Supplies or Services/Request for Quotations (DD Form 1155) shall be submitted to the General Services Administration regional office which normally serves the contracting activity. Each delivery order which is subject to fiscal year limitations necessitating GSA acquisition action to be completed not later than September 30 shall contain a notation to that effect.

(b) *Commercial sources.* Delivery orders on DD Form 1155 will be placed directly with contractors pursuant to GSA Term Contracts.

(1) *Inspection and acceptance.* Arrangements for inspection and acceptance shall be the responsibility of the ordering agency, except when the GSA Term Contract specifically provides for source inspection by GSA.

(2) *Default terminations.* The GSA contracting office shall be notified each time an order is terminated for default in accordance with contract provisions.

Subpart 208.7—Acquisitions From Blind and Other Severely Handicapped

208.705 Procedures.

208.705-1 General.

Orders placed with the blind and other severely handicapped in accordance with the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) may be issued on the DD Form 1155.

[54 FR 30740, July 24, 1989]

Subpart 208.70—Coordinated Acquisition

208.7000 Applicability.

Although the Department of Defense Coordinated Acquisition Program includes items assigned to one or more of the Departments or the General Services Administration for integrated materiel management, the procedures set forth in this subpart apply to items assigned for purchase responsibility only, and not to those in the integrated materiel management program. The latter items will be obtained in accordance with current supply procedures.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7001 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

Acceptance of MIPR means DD Form 448-2 (Acceptance of MIPR) executed by a Acquiring Department as notice to the Requiring Department that a MIPR has been received and accepted for contracting action.

Acquiring Department means the Department, Agency, or the General Services Administration which is assigned the responsibility for satisfying a purchase request.

Coordinated acquisition means (a) acquisition by contracting activities, within the 48 contiguous States and the District of Columbia, of certain supplies to satisfy the requirements (including overseas requirements) of all Departments in compliance with assignment responsibilities set forth in Subpart 208.71; (b) procurement assignments made by the respective Unified Commanders in Alaska, Hawaii, and outside the United States, regardless of funds utilized; and (c) acquisition assignments made in accordance with 8.7018. It does not include acquisitions made in Alaska, Hawaii, or outside the United States which do not fall within (a) or (b) above.

Direct citation acquisition (Category II Method of Funding) means an acquisition having separate identification of the items and citing the funds of the Requiring Department, and may be accomplished by combining the requirements of two or more Departments under one contract with separate schedules showing the quantities, prices, dollar amounts, and citation of funds of each Requiring Department, or by placing separate contracts for each department.

Integrated materiel management items means items assigned to one Department or the General Services Administration for entire Department of Defense management. Such management normally includes responsibility for computation of requirements, funding, budgeting, storing, issuing, cataloging, standardizing and contracting functions.

Military service managed items means items which are within Federal Supply Classes assigned to the Defense Logistics Agency or the General Services Administration but which are retained for supply management by the Requiring Department.

Contracting department means the Department or the General Services Administration whichever is assigned the contracting responsibility for the supplies.

Purchase request means the following types of authorized purchase requisitions: (a) Military Interdepartmental Purchase Request (MIPR) (DD Form 448); and (b) Requisition for Coal, Coke, and Briquettes (DD Form 416).

Reimbursable acquisition (Category I Method of Funding) means the acquisition of supplies for a Requiring Department on a contract funded by the Acquiring Department, without separate identification of the items or separate citation of funds of the Requiring Department, with subsequent delivery to and reimbursement by the Requiring Department.

Requiring department means the Department originating a requisition or purchase request for supplies.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7002 Responsibilities under coordinated acquisition.

The Acquiring Department is generally responsible for the following under coordinated acquisition:

(a) Operational phases of acquisition planning (phasing the submission of requirements, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders in such a manner as to assure meeting the needs of the Requiring Departments at the lowest possible price to the Government, and at the same time avoiding unnecessary peaks and valleys of production);

(b) Purchasing.

(c) Performing or arranging through a contract administration office for contract administration, including followup and expediting of inspection and transportation; and

(d) Acquisition of licenses under patents or other proprietary rights covering the subject matter of the acquisition and the settlement of patent infringement claims arising out of the acquisition; approval of the Departments whose funds are to be charged for acquisition of licenses or settlement of claims shall be obtained.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7003 General principles governing implementation of acquisition assignments.

208.7003-1 [Reserved]

208.7003-2 Relationship between research and development and coordinated acquisition.

Items are not subject to procurement assignment until they have reached the production stage.

208.7003-3 Small dollar value purchases.

Requirement of small dollar value shall be acquired in accordance with the provisions of the approved implementing procedures covering the particular assignment. Such implementing procedures shall normally provide a small dollar limitation of $2,500; however, in special situations, the limit may vary depending upon the commodity area and may be expressed either in a higher or lower dollar value, by tonnage, less-than-carload lot quantities, or other units, as appropriate. Such implementing procedures shall clearly state that requirements of a value or quantity less than the prescribed limitations shall, wherever feasible, be acquired by the Requiring Department. A MIPR for a military type item need not contain such a notation. The Acquiring Department shall not return a MIPR submitted in accordance with the foregoing, but shall procure such items.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7003-4 Emergency.

In case of emergency, when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated acquisition, purchases may be made without the prior authorization of the Acquiring Department. When an emergency purchase is made, one copy of the contractual instrument, bearing or accompanied by a statement of the emergency, shall be transmitted promptly to the contracting activity of the Acquiring Department (the coordinated acquisition assignee). The provisions of this paragraph will not normally be used for stock replenishment. These emergency procedures do not apply to the purchase of integrated materiel management items as described by 208.7001. Emergency purchase of such items is covered by 208.7101-2(d).

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7003-5 Department of Defense manufacturing establishment.

When acquisition assignments have been made for items required by manufacturing establishments of the Departments, these items shall be obtained through the facilities of the Acquiring Department unless such action will unduly hinder or delay production. When acquisitions are made other than through the Acquiring Department, one copy of the contractual instrument bearing or accompanied by a statement of the circumstances necessitating such acquisition shall be transmitted promptly to the contracting activity of the Acquiring Department. This paragraph is not applicable when purchases are made pursuant to 208.7003-3 above.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7003-6 Consolidation of requirements.

The primary objective of coordinated acquisition is to obtain for the Government maximum economy through the consolidation of requirements and the elimination thereby of competitive purchases among the Departments. The Acquiring Department shall, to the extent consistent with the delivery schedule of the Requiring Department, consolidate in one contract its own requirements for the same or similar items plus all requirements via MIPRs or other purchase requests.

[51 FR 46105, Dec. 23, 1986, as amended at 52 FR 34787, Sept. 15, 1987; 54 FR 26205, June 22, 1989]

208.7004 Items in short supply.

When shortages develop in the market for supplies being purchased and requirements have been submitted by more than one Department, the normal procedure shall be to resolve the problem on a Departmental level between or among the Departments based on priorities for the supplies. If agreement cannot be reached, the subject shall be referred to the Deputy Assistant Secretary of Defense (Logistics) for decision.

208.7005 Transfer of uncompleted Contracts.

208.7005-1 Effect of assignment of acquisition responsibility.

As a general rule, when the acquisition responsibility for a commodity or class of commodities is assigned to one Department, or the General Services Administration, uncompleted contracts of any other Department, or the General Services Administration, for any commodity or class of commodities will not be transferred but will continue to be administered by the Acquiring Department or Defense Contract Administration Services as appropriate.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7005-2 Contracting officers under transferred contracts.

In the case of any contract transferred, or to be transferred, to any Department, the successor to the contracting officer for each such contract shall be the Head of the Contracting Activity (or any contracting officer thereof) to which the administration of any such contract is assigned, and any such successor shall have all of the rights and responsibilities of a contracting officer under such transferred contract.

208.7006 Purchase authorization.

208.7006-1 MIPRs or other authorized purchase requests.

(a) Military Interdepartmental Purchase Requests (MIPRs) or other authorized purchase requests when received by the Acquiring Department shall be the authority to acquire the supplies or nonpersonal services in accordance with single department acquisition assignments or agreements between the Departments concerned as provided in 208.7018. The Acquiring Department is authorized to create obligations against the funds cited in a MIPR without further referral to the Requiring Department. The Acquiring Department has no responsibility to determine the validity of a stated requirement in an approved MIPR; however, it should bring apparent errors in the requirement to the attention of the Requiring Department.

(b) When purchase requests other than MIPRs (see 208.7001) are used as the basis for acquisition, the general procedures prescribed for processing, amending, accepting and terminating requirements on MIPRs as prescribed in other paragraphs of this subpart shall normally be followed, except as otherwise agreed to by the Departments involved.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7006-2 Use of advance MIPRs.

(a) An Advance MIPR is an unfunded MIPR provided to the procuring activity in advance of the formal funded MIPR whereby initial steps in planning contract action can begin at an earlier date.

(b) Advance MIPRs may be used only when the Acquiring Department and the Requiring Department agree that the procedure may be beneficial in placing the acquisition and obtaining the requirements in a more timely manner. Blanket agreements may be used for this purpose.

(c) Advance MIPRs shall not be released to a procuring activity until proper approval of the requirement is obtained.

(d) When Advance MIPRs are used, the DD 448 shall be prominently marked "Advance MIPR."

(e) For urgent requirements, the Advance MIPR may be in the form of an electrically transmitted message.

(f) On the basis of an Advance MIPR, the Acquiring Department may take the initial steps toward establishing a contract, such as obtaining internal coordination, and preparing an acquisition plan. The extent of such action may be determined by the procuring Departments. However, contracts shall not be awarded on the basis of Advance MIPRs.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7006-3 Justifications and approvals and determinations and findings.

(a) Coordinated procurement shall not be used by Departments to avoid FAR Part 6 requirements concerning full and open competition (see FAR 6.002).

(b) When a Requiring Department requests that an Acquiring Department obtain supplies or services by contracting using other than full and open competition (see FAR subpart 6.3):

(1) The Requiring Department shall provide:

(i) The complete certified documentation required by FAR 6.303-2(b) (which documentation shall be approved at a level within the Requiring Department equivalent to the appropriate level in FAR 6.304 prior to submitting the MIPR to the Acquiring Department);

(ii) When requested by the Acquiring Department Contracting Officer, any additional supporting data (e.g., the results of any market survey conducted or the reason why none was conducted, actions that will be taken by the Requiring Department to overcome barriers to competition in the future);

(iii) The executed Determination and Findings (D&F) specified in FAR 6.302-7(c)(1), when applicable; and

(iv) Two copies of all documentation and D&F's with the MIPR or other purchase request.

(2) The Acquiring Department Contracting Officer shall prepare the justification and obtain the approval required by FAR 6.303 and 6.304.

(c) When a Requiring Department recommends that an Acquiring Department obtains supplies or services by contract using full and open competition after excluding a particular source (see FAR 6.202):

(1) The Requiring Department shall provide all data required by FAR 6.202(b)(2); and

(2) The Acquiring Department shall prepare the Determination and Findings required by FAR 6.202(b)(1).

(d) Foreign end products. Where a foreign end product is specified by the Requiring Department, that Department is responsible for determining that a domestic source end product is not available as required by FAR 25.108 and FAR 25.302. Two copies of the determination that a domestic source end product is not available shall be furnished to the Acquiring Department with the MIPR.

[51 FR 46105, Dec. 23, 1986, as amended at 52 FR 34787, Sept. 15, 1987; 54 FR 26205, June 22, 1989]

208.7006-4 Delivery schedules.

(a) In submitting MIPRs the Requiring Department should take into consideration the normal administrative lead time of the particular commodity in order to insure delivery by the date required. The time of delivery or performance is an essential element for inclusion in a contract and must be clearly stated in each MIPR. Delivery and performance schedules on MIPRs shall be designed to meet the requirements of the particular acquisition and must be realistic (see FAR 12.1). If the delivery schedule, as set forth in a MIPR, is unrealistic or cannot be accepted by the Acquiring Department, the DD Form 448-2 "Acceptance of MIPR" will be so annotated (see 208.7009-3). Changes in the requested delivery schedule shall be accomplished in accordance with 208.7008-5.

(b) When a short delivery schedule is mandatory, the MIPR shall be marked "URGENT" in bold letters. The Requiring Department's justification for the "URGENT" marking shall be stated on the MIPR or attached thereto, in order to enable the Acquiring Department to apply any necessary expediting techniques to assure the required delivery.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26205, June 22, 1989]

208.7006-5 Specifications, drawings, and other purchase data.

(a) The Requiring Department shall furnish to the Acquiring Department a list (or copies) of specifications, drawings, and other data, as appropriate, required for the acquisition. If Federal, Military, Departmental, or other specifications, or drawings or data are available to the Acquiring Department and referenced in the MIPR, they need not be furnished by the Requiring Department (but see FAR 46.407). Required changes in such purchase data shall be accomplished as set forth in 208.7008-5.

(b) The Requiring Department shall furnish to the Acquiring Department a list of all persons who have had access to proprietary or source selection information (see FAR 3.104-9(f)).

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 21068, May 16, 1989; 54 FR 22282, May 23, 1989; 54 FR 26205, June 22, 1989]

208.7006-6 Utilization of existing Department of Defense assets.

The Requiring Department is responsible for insuring compliance with FAR 8.001 prior to submitting military interdepartmental purchase requests for acquisition action.

208.7006-7 Options for increased quantities.

If the Requiring Department desires an option to purchase an additional quantity, the MIPR shall so stipulate and shall contain a justification therefor.

208.7006-8 Acquiring used or reconditioned material, former Government surplus property, and residual inventory.

When used or reconditioned material, former Government Surplus Property and residual inventory is expected to be acceptable for use on a contract, the following information is to be provided by the Requiring Department in the MIPR: (a) a list of any supplies that need not be new; and (b) the basis for determining the acceptability of such supplies, which is to include an analysis of the factors at FAR 10.010(b). If the items are not acceptable for use on a contract, the Requiring Office shall note such a determination on the MIPR.

[54 FR 26206, June 22, 1989]

208.7007 Funds and payments.

208.7007-1 Citation of appropriation and funds of requiring Department—Category II method of funding.

Except as provided in 208.7007-2, contracts and orders for other than integrated supply management materiel shall cite the specific fund citation(s) and the MIPR number of the Requiring Department. The Acquiring Department shall determine which type of funding (direct citation or reimbursable acquisitions) shall be used.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7007-2 Citation of funds of Contracting Department—Category I method of funding.

Under the conditions listed below, only the funds of the Acquiring Department shall be cited in the consolidated contracts; and the contracts and orders thereunder shall provide for payment by the Acquiring Department or by the Defense Contract Administration Services as appropriate:

(a) Delivery is from existing inventories of the Acquiring Department;

(b) Delivery is by diversion from existing contracts of the Acquiring Department which cite the funds of the Acquiring Department;

(c) Production or assembly is through government work orders in Government-owned plants;

(d) Allocation of production quantities among users from one or more contracts for which the identity of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(e) Acquisition of the end items involves separate acquisition of components to be assembled by the Acquiring Department;

(f) Payments will be made without reference to deliveries of end items; e.g., cost-reimbursement type contracts and fixed-price contracts with progress payment clauses; or

(g) It is not feasible and economical to use Category II method of funding.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7007-3 Disbursement.

When the contract is funded with DoD funds and is to be administered by the Defense Contract Administration Services, the Acquiring Department shall cite as the disbursement office the Defense Contract Administration Services Region Disbursing Office (see 242.102). If the contract is not administered by the Defense Contract Administration Services, the Acquiring Department shall cite as the disbursement office the payment office designated by the Requiring Department (see 208.7008-1).

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7007-4 Authorization for exceeding MIPR estimates.

Each MIPR shall indicate on its face whether or not the total MIPR estimate may be exceeded by the purchasing office, and if affirmative, by what amount.

[51 FR 46105, Dec. 23, 1986, as amended at 53 FR 38246, Sept. 29, 1988]

208.7008 Preparation and use of DD Form 448 (MIPR).

DD Form 448 is substantially self-explanatory. Information provided in MIPRs shall be arranged in Uniform Contract Format to the extent feasible. If desired, each Department may overprint fixed repetitive information.

208.7008-1 Special instructions.

(a) *MIPR number.* The MIPR number will consist of:

(1) The requiring agency identification code as prescribed in the DoD Activity Address Directory (DoDAAD), DoD 4000.25D-6-M;

(2) The last digit of the fiscal year; and

(3) The number of the particular MIPR (numbered consecutively by the requiring activity).

Amendments will be numbered with the MIPR number suffixed with the amendment number assigned in consecutive numbered sequence.

(b) Appropriate checks in Item 9 shall be accomplished in compliance with Department of Defense policy which requires interdepartmental screening of items in accordance with FAR 8.001 to determine stock availability within other Departments prior to preparation of a DD Form 448. Items which are determined to be available from stocks of other Departments shall be requisitioned as follows:

(1) Items within the scope of MILSTRIP (see DoD 4000.25-1-M) shall be obtained by use of DD Form 1348/1348m, DoD Single Line Item Requisition System Document;

(2) Items not covered by MILSTRIP shall be obtained by use of DD Form 1149, Requisition and Invoice/Shipping Document. If an Acquiring Department determines after receipt of a

MIPR that the items can be supplied from stock, the MIPR shall be used for effecting supply from such stock.

(c) Normally a MIPR shall be restricted to one major end item, including its required spare parts, ground support equipment, and similar related items. MIPRs for other than major end items normally shall be limited to items within a single Federal Supply Classification.

(d) Attachments to MIPRs (Item 10) must be prepared in sufficient numbers so that each copy of a MIPR submitted to the Acquiring Department is complete with a copy of all attachments. "Ship To and Mark For" addresses in shipping instructions shall include the clear text identification and DoDAAD code if assigned.

(e) Item 13 is used to identify the name and address of the office to receive invoices and make payment only if the resulting contract is not to be paid by the Defense Contract Administration Services in accordance with 208.7007-3, and the office to receive invoices and make payment is known at the time of preparation of the MIPR. If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office. If payment is to be made by an office other than the office to which the invoice is to be mailed (Item 13), the name, address, and DoDAAD code of the payment office shall be set forth in detail as an attachment to the MIPR. If multiple offices are to receive invoices and make payment, the names and addresses of those offices shall be set forth as an attachment to the MIPR, including the DoDAAD code of each payment office. Whenever the payment office(s) is included in an attachment, an appropriate reference to the attachment will be included in Item 13. If the names and addresses of those offices are to be provided to the Acquiring Department after preparation of the MIPR, the DoDAAD code also shall be provided for each payment office.

(f) Allotment data for the acquisition of supplies shall be entered in Item 14. Allotment data for the transportation of supplies at Government expense, if cited in the MIPR in accordance with 208.7017 shall be entered in Item 12. Each citation in Item 14 shall be set forth in the appropriate space in the following manner:

(1) *ACRN.* If the Accounting Classification Reference Number procedures of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, the ACRN for each fund citation in Item 14 shall be entered. (The Acquiring Department is not required to use in the resulting contract the ACRN assigned to a fund citation in the MIPR.)

(2) *Appropriation.* Will be shown in the ten positions as follows:

(i) First and second positions shall be the Treasury Department number identifying the Department or Agency to which the appropriation applies or has been transferred.

(ii) Third and fourth positions shall be the Treasury Department number identifying the Department or Agency from which an appropriation has been transferred; shall be blank if no transfer is involved.

(iii) Fifth and sixth positions shall identify the Appropriation Fiscal Year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability and the sixth position shall be the last digit of the final year of availability. For annual appropriations the fifth position shall be blank and the sixth position shall be the "X".

(iv) Seventh through tenth positions shall be the Treasury Department appropriation serial number.

(3) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(4) *Supplemental accounting classification data.* Shall not exceed 36 characters. Enter in accordance with Departmental or Agency regulations.

(5) *Accounting station.* Shall show the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(6) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(7) *Additional citations.* If space is required for additional fund citations, they shall be set forth in the same manner as an attachment to the MIPR and a reference to the attachment will be included on the form.

(g) Requiring Activities shall provide MILSTRIP requisition data prescribed in appendix B of the MILSTRIP Manual, for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(h) The Requiring Activity will furnish estimated weight, cube and dimensions for each line item or a statement that such data are not available and the reasons therefor.

(i) The Requiring Activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989; 55 FR 19077, May 8, 1990]

208.7008-2 Cutoff dates for submission of Category II (direct citation) MIPRs.

(a) Unless otherwise agreed between the Departments, a cutoff date of 31 May of each year is established for the receipt of MIPRs citing expiring appropriations which must be obligated by 30 September of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the Requiring Department will communicate with the Acquiring Department prior to submission to ascertain whether or not it will be possible for the Acquiring Department to execute a contract or otherwise obligate the funds by the end of the fiscal year. Acquiring Departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the Acquiring Department that all such funds will be obligated. The provisions of these instructions are not to be construed as restrictive in the processing of MIPRs when it is within the capabilities of the Acquiring Department to execute contracts or otherwise obligate the funds prior to the end of the fiscal year.

(b) MIPRs citing continuing appropriations are not restricted by law to time limits for obligation; therefore, the cutoff date of 31 May is not applicable to such MIPRs and contracting action should continue regardless of whether obligation will be accomplished before or after the end of the fiscal year. However, as the timely accomplishment of obligations is a factor affecting delivery of material, every effort must be made by the Acquiring Department to obligate available funds as soon after receipt of the MIPR as is possible.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7008-3 Notification of inability to obligate.

On 1 August of each fiscal year, the Acquiring Department will advise the Requiring Department of any Category II (direct citation) MIPRs on hand citing expiring appropriations on which they will be unable to obligate the funds prior to the fund expiration date. If an unforeseen situation develops after 1 August which will prevent execution of a contract, the Acquiring Department will notify the Requiring Department of that fact by the most expeditious means and return the MIPR accompanied by a letter of transmittal authorizing purchase by the Requiring Department including the reason that acquisition could not be accomplished.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7008-4 Number of copies of MIPRs with attachments to be submitted.

Unless otherwise agreed by the Departments, the original and six copies of each MIPR, all complete with attachments, shall be forwarded to the Acquiring Department. When copies of specifications, drawings or other data are to be furnished with MIPRs (see 208.7006-5), the number of copies of such data to be furnished shall be as agreed upon by the Requiring and Acquiring Departments.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7008-5 Changes to MIPRs.

(a) Normally, changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. However, a MIPR amendment for increased quantities of items specified in the original MIPR may be used when it is known that the original MIPR requirements have not been released for solicitation but then only after coordination and agreement with the Acquiring Department. Changes may be initially provided by expeditious means such as telegraphic message but shall be confirmed by a MIPR amendment. Requirements for additional line items of supplies or services not provided for in the original MIPR shall be submitted as a new MIPR.

(b) Only those items of the DD Form 448 that are applicable to the change, revision, etc., being written, which vary or deviate from the data shown on the basic MIPR or prior amendment thereto will be filled out. All other items will have "n/c" inserted to reflect no change. However, basic information in items 1 through 8 must always be shown.

(c) A MIPR amendment is not required for change of a disbursing office set forth on a DoD funded MIPR when the resultant contract is assigned for contract administration to a Defense Contract Administrative Services Region. Such change may be made by the DCASR by issuance of an administrative change order, copies of which will be provided to the Contracting Officer for transmittal to the requiring activity.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7008-6 Requests for additional funds.

When the Acquiring Department requires additional funds to complete contracting actions for the Requiring Department, the request for additional funds must identify the exact items involved and the reason why additional funds are required. The Requiring Department shall take expeditious action to provide such funds by an amendment to the MIPR or to reduce requirements accordingly. In case of any anticipated delay in furnishing required additional funds, the Acquiring Department will be advised accordingly.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7009 Acceptance of MIPR.

As soon as practicable, but not later than 30 days after receipt of a MIPR, the Acquiring Department shall formally accept the MIPR by DD Form 448-2, "Acceptance of MIPR." If this time limit cannot be met, the Requiring Department shall be informed of the reason for the delay and the anticipated date the MIPR will be accepted. In any event, Category I MIPRs must be accepted in writing by the Acquiring Department prior to the expiration of funds cited. When accepted for reimbursable acquisition, the executed DD Form 448-2 is the authority for the Requiring Department to record the obligation of funds. When accepted for direct citation acquisition, the accomplished date and a conformed copy of the contract will be the authority to record the obligation. The accepting activity of the Acquiring Department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for actions among other contracting activities.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7009-1 Qualified acceptance.

Where contingencies, price revisions or variations in quantities are anticipated by the Acquiring Department under reimbursable acquisition, the acceptance will be so annotated on DD Form 448-2. When the acceptance is qualified, the Acquiring Department will periodically advise the Requiring Department prior to submission of billings, of any changes in the acceptance figure so that an amendment to the MIPR may be issued by the Requiring Department and the appropriate adjustment may be made to the recorded obligation to reflect the current price.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7009-2 Non-qualified acceptance.

If the acceptance of a MIPR is not qualified by the Acquiring Department for anticipated contingencies under reimbursable acquisition, the price on the acceptance will be final and will be billed at time of delivery.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7009-3 Preparation and use of DD Form 448-2 (acceptance of MIPR).

(a) DD Form 448-2 is substantially self-explanatory; however, certain details are defined below. Only pertinent items should be accomplished.

(1) Check the specific terms in Item 6 under which the MIPR is being accepted (see 208.7007-3).

(2) If any one of the MIPR line items is not accepted, Item 7 will be checked and the affected MIPR line item number and reason recorded in Item 13.

(3) Items 8 and 9 will be used only:

(i) When Item 6c acceptance is indicated (identify the MIPR line item numbers that will be provided under each method of financing in Items 8a and 9a respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (the affected MIPR line item numbers will be listed together with the adjusted quantities or estimated costs in the columns provided under Items 8 and 9 as may be appropriate).

(4) Whenever a MIPR is accepted in part or in total under Category II (direct citation) method of financing, the Acquiring Department will forecast in Item 10 the approximate date that contractual placement is expected to be accomplished.

(5) Enter the total amount of funds in Item 11 required by the Acquiring Department to fund the MIPR items, as accepted.

(6) Complete Item 12 only in those cases where the amount recorded in Item 11 is not in agreement with the amount recorded in Item 5. This will serve either as (i) request on the Requiring Department to issue a MIPR amendment to provide the additional funds required, or (ii) authority for the Requiring Department to withdraw the available excess funds. When funds of two or more appropriations are involved, proper breakdown information will be provided in Item 13.

(7) Item 13 will be used to record (i) justification, by MIPR line item, for any additional funds required; (ii) explanation for rejection of MIPR whether in part or in total; (iii) appropriation and subhead data cited on the MIPR; and (iv) such other data as may be pertinent.

(b) DD Form 448-2 shall be executed for all MIPR amendments involving an adjustment of funds or delivery schedule, and in all other cases only when requested by the Requiring Department.

(c) The Requiring Department will be furnished four copies (one signed) of each accomplished DD Form 448-2 unless otherwise agreed between the Departments.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7009-4 Withdrawal of funds.

(a) When the Acquiring Department accepts a MIPR for reimbursable acquisition in a lesser amount than authorized on the MIPR, the DD Form 448-2 is the authorization for the Requiring Department to withdraw the excess funds. Upon receipt of the final billing (SF 1080) and a subsequent determination that all items requested on the MIPR have been delivered and billed in an amount less than the MIPR, the Requiring Department may adjust their fiscal records accordingly without authorization from or notice to the Acquiring Department.

(b) When the Acquiring Department has accepted a MIPR for direct citation acquisition, and when all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the Acquiring Department. The Acquiring Department is to immediately notify the Requiring Department by submittal of a MIPR Amendment (DD Form 448-2) that these excess funds are available for recapture. This amendment is authorization for the Requiring Department to withdraw the funds. The Acquiring Department is prohibited from further use of such excess funds.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7010 Components of end items.

208.7010-1 Contractor-furnished components.

In the acquisition of end items where the contraotor normally secures all components thereof from his own source (not Government-furnished), the acquisition assignment does not apply to the component items required by such contractor.

208.7010-2 Government-furnished components.

In the acquisition of end items where the Government furnishes components which are covered by an acquisition assignment, such components shall be acquired in accordance with the acquisition assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Contracting Department or is authorized in accordance with subpart 208.71.

208.7010-3 Purchase of components over and above those initially purchased with the end item.

The acquisition of components covered by an acquisition assignment, over and above those initially purchased with the end item, shall be effected in accordance with the acquisition assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Acquiring Department or is authorized in accordance with 208.7100.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7011 Distribution of contracts and orders.

(See 204.202.)

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7012 Cancellation of requirements.

(a) *Direct citation acquisition.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall so notify the Acquiring Department by telegraphic notice. In the event that the Acquiring Department has not entered into a contract for the supplies and services to be canceled, the Requiring Department shall be immediately notified to that effect. Upon receipt of such notification, the Requiring Department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the canceled items.

(1) In the event that the items to be canceled have already been placed under contract, the following procedures will apply. As soon as practicable but in any event within 45 days after receipt of the notice of cancellation from the Requiring Department, the Contracting Officer shall issue a Termination Data Letter to the Requiring Department (original and 4 copies) which will contain as a minimum the information set forth below.

Subject: Termination Data Re:

Contract No.——————————

Termination No.——————————

Contract ——————————

To:

(a) As termination action is now in progress on the above contract, the following information is submitted:

(1) Brief description of items terminated.

(2) You are notified that the sum of $—— is available for release under the subject contract which sum represents the difference between $——, the value of items terminated under subject contract, and $—— estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR No.—— Accounting Classification —— Amount ——

Total available for release at this time $——.

(b) You are requested to forward an amendment to MIPR —— on DD Form 448 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic examinations (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

——————————————————

(Signature of Contracting Officer)

(2) Periodic examinations of the termination proceedings will be accomplished no less often than every 60 days by the termination contracting officer to reassess the Government's

probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required to consummate settlement, prompt action will be taken to notify the contracting office, which will amend the Termination Data Letter accordingly. A MIPR amendment to reflect the reinstatement of funds shall be processed by the Requiring Department within 30 days after the amended Termination Data Letter requesting reinstatement of funds has been received from the contracting office.

(3) If required, an amendment to the MIPR covering final removal of any remaining excess funds with respect to terminated quantities shall be prepared by the Requiring Department upon receipt of its copy of the Termination Settlement Agreement.

(b) *Reimbursable acquisition.* When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall notify the Acquiring Department by telegraphic notice. Within 30 days, the Acquiring Department shall notify the Requiring Department as to the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the Requiring Department shall issue a MIPR amendment to reduce the quantities and funds accordingly.

(c) *Termination by default.* When the Acquiring Department exercises authority to terminate for default (see FAR Part 49), that Department will query the Requiring Department as to whether the supplies or services to be terminated are still required so that repurchase action can be undertaken.

(1) The Requiring Department will not obligate funds on a contract terminated for default until such time as a contractual supplemental agreement of settlement or other written evidence from the Acquiring Department as to release of funds is received.

(2) On the repurchase action, the Acquiring Department will not exceed the unliquidated funds on the defaulted contract without the provisions of additional funds by the Requiring Department.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7013 Administrative costs.

The Acquiring Department shall bear, without reimbursement therefor, the administrative costs incidental to its acquisition of supplies for another Department. However, when an acquisition responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such acquisition responsibility shall be made available to the successor Acquiring Department which shall assume budget cognizance at the earliest possible date.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7014 Inspection.

Policies and procedures concerning inspection and acceptance for use in conjunction with this subpart are set forth in FAR part 46.

208.7015 Execution of contracts.

Generally, the Acquiring Department shall execute a single contract where an award embodying the requirements of more than one Department is made to a single contractor.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7016 Status reporting.

(a) The Acquiring Department shall maintain an appropriate system of MIPR followup so that the Requiring Department may be informed of the current status of their requests. In addition, an appropriate system of followup shall be maintained by the contract administration office so that the Acquiring Department may be currently informed as to contractor performance and in turn to insure that the Requiring Department is apprised of the status of contracts resulting from MIPRs.

(b) If requested by the Requiring Department, the Acquiring Department will furnish the Requiring Department a copy of the solicitation document for materiel management status information when the request is satisfied through the use of direct citation of funds (Category II Method of Funding).

(c) Any reimbursement billings, shipping documents, contractual documents, project orders or related documentation furnished to the Requiring Department will identify the Requiring Department's MIPR number, quantities of items, and funds covered thereby.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7017 Transportation of supplies.

The Requiring Department is responsible for advising the Acquiring Department or the Transportation Officer in the Contract Administration Office, as appropriate, the appropriate fund account chargeable for transportation costs in effecting delivery of supplies at Government expense. The Requiring Department shall accomplish this by either citing the fund account on each MIPR or providing the appropriate fund account to the Transportation Officer of the office administering the contract, at the commencement of each fiscal year, for citation on the Government bill of lading. In every instance, the Government bill of lading, which is generally issued by the Transportation Officer in the responsible Contract Administration Office, shall show the Requiring Department as the Department to be billed, and the appropriate fund account designated by that Department.

[51 FR 46105, Dec. 23, 1986, as amended at 54 FR 26206, June 22, 1989]

208.7018 Acquisition agreements.

(a) This paragraph establishes policy as authorized in 10 U.S.C. 2308 with regard to agreements between the Departments or other agencies for acquisition of commodities or services not assigned in accordance with 208.71.

(b) 10 U.S.C. 2308 provides that Department Heads, by agreement, may make assignments and delegations of acquisition responsibilities from one Department to another or may create joint or combined offices to exercise acquisition functions and responsibilities.

(c) Agreements may be made on either a one-time basis or a continuing basis. The submission of a MIPR by a requiring activity and its acceptance by the contracting activity of another Department, even though based on oral communication, shall establish a one-time agreement. Delegated acquisition responsibilities of a continuing nature shall be considered for coordinated acquisition assignment. However, all agreements of a continuing nature shall be formalized, implemented, and distributed among the activities concerned even though not considered suitable for coordinated acquisition assignment.

Subpart 208.71—Commodity Assignments

208.7100 Assignment authority.

The commodity assignments set forth below have been made by the Deputy Assistant Secretary of Defense (Logistics) to the Military Departments. Also included are assignments to the General Services Administration made by the Deputy Under Secretary of Defense for Acquisition Management in accordance with DoD/GSA Agreements. The letter "P" appearing after an FSC Code indicates a partial FSC assignment. There may be specific items within any of the assignments which have been designated for DoD Integrated Materiel Management to other than the coordinated acquisition assignee. Such items will be purchased by the DoD Integrated Materiel Manager.

208.7100-1 Exclusions—Military Department assignments (Except DLA).

Except for the types of items excluded below, requiring Departments may purchase locally at their option any centrally managed, commercially available item assigned to a Military Department; provided, such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. Excluded are:

(a) Items that have war reserve requirements, are necessary for the wartime mission, are required to execute the unit deployment mission or are required to support the industrial mobilization base;

(b) Items directly related to the operation of a weapon system or its support equipment;

(c) Items with special security characteristics;

(d) Items of a dangerous nature (e.g., explosives, munitions).

[53 FR 1925, Jan. 25, 1988]

208.7100-2 Exclusions—DLA and GSA assignments.

(a) *Optional Exclusions.* With respect to commodity assignments made to the Defense Logistics Agency or the General Services Administration, the following categories of service-managed items within an assigned class may be purchased by the Departments of the Army, Navy, or Air Force at their option:

(1) Items in a research and development stage—This exception permits the Military Departments to contract for research and development requirements, including quantities for testing purposes and items undergoing inservice evaluation (not yet in actual production, but beyond prototype). The term "research and development" as used herein relates only to acquisitions described in FAR Part 35. Generally, this exception can be used only when the acquisition is covered by research and development funds; and

(2) Items peculiar to Nuclear Ordnance Materiel, because of design characteristics or because of test-inspection requirements which are controlled by the Department of Energy (DOE) or by the DoD to insure reliability of nuclear weapons.

(i) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of Agency control, or to any item which requires test or inspection conducted or controlled by DOE or DoD. The Defense Nuclear Agency will have DoD procurement responsibility for all items assigned for integrated management in accordance with DoD Directive 5105.31.

(ii) This exception does not cover items used for both nuclear ordnance and other purposes if such items are not subject to the special testing procedures.

(3) Items to be acquired under the authority of 10 U.S.C. 2304(c)(6) and FAR 6.302-6, acquisitions when disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(4) Items to be acquired under the authority of 10 U.S.C. 2304(c)(1) and FAR 6.302-1 (a)(1) and (b)(2), follow-on contracts for the continued development or production of a major system or highly specialized equipment including major components thereof;

(5) Items which are directly related to a weapon/defense/space system and which are design-controlled by, and acquired from either the system manufacturer or a manufacturer of a major subsystem thereof;

(i) This exception is intended to cover a specific and relatively small portion of "weapon/defense/space system" related items. An exempted item must meet two conditions. First, it must be directly related to the weapon system. Secondly, it must be both design controlled and acquired from the system or major subsystem contractor.

(ii) The exception is intended, for example, to permit a Service to contract for an item which it acquires from an airframe manufacturer (as sole source), provided the airframe manufacturer is responsible for the design of the item. It would likewise pertain to a component of a Government-furnished engine to be installed in the airframe, if the Service acquires the component from the engine manufacturer and the engine manufacturer has design cognizance of the item.

(iii) The exception is not intended to cover the broad category of weapons related items but only that portion which is both acquired from and design controlled by the system or major subsystem contractor.

(6) Items subject to rapid design changes or to continuous redesign or modification during the production

and/or operational use phases which necessitate continual contact between industry and technical personnel of the Requiring Department to insure that the item acquired is exactly what is required.

(i) This exception permits the Military Departments to contract for items of highly unstable design. Its use must be predicated on a determination that it is clearly impractical, both from a technical and contracting viewpoint, to refer the acquisition to DLA or GSA. Thus, the possibility of a number of design changes occurring during the course of the contract is not in itself sufficient evidence for retention of the acquisition. Neither is the fact that an acquisition would possibly qualify for placement as a negotiated contract. Conversely, an acquisition for an item covered by a reasonably firm specification which can be placed under the sealed bid procedure is prima facie evidence that the use of the exception is not valid.

(ii) This exception also applies to items requiring compatibility testing as a contract requirement, provided that such testing requires continual contact between industry and technical personnel of the Requiring Department.

(7) Containers acquired only with items for which they are designed; and

(8) Emergency acquisitions, as determined by the Requiring Department:

(i) This exception permits the Services to make emergency acquisitions (valued at over $2,500) in the context of 208.7003-4 when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated acquisition.

(ii) As a general rule, this exception should cover items only when they are readily available from commercial inventories or in current production. It should not be used with extended production leadtime.

(iii) Unless the item is immediately available from a commercial source, emergency acquisitions should be coordinated with the cognizant DLA Center or GSA Support Region by elephone or other rapid communicaion prior to proceeding with the local acquisition. This will serve the interests of the Requiring Department for the following reasons:

(A) The need may be satisfied immediately by diversion from a current DLA or GSA contract;

(B) The Center or the GSA Support Region may arrange to satisfy the requirement from other Military Department stocks or DLA/GSA stocks recently delivered under a DLA or GSA contract; and

(C) The Center or GSA Support Region may be able to modify an existing DLA or GSA contract and obtain the material faster than the Requiring Department could by a unilateral acquisition.

(9) Acquisitions of military service-managed or noncataloged items not in excess of $25,000 per line item—This exception permits the Military Departments to acquire a line item (excluding items identified in 208.7100-1 or included in a Federal Supply Schedule mandatory for use by DoD activities) which does not exceed a value of $25,000; provided, the contracting officer judges such action to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement.

(10) Noncatalog items in the nature of a one-time buy and not contemplated as an item in the supply system:

(i) This exception is intended to permit the Military Departments to contract for a nonrecurring requirement for a noncataloged item. "Not contemplated as an item in the supply system" as a practical matter means that the item is not in the supply system nor is such anticipated. This exception could cover a part or component for a prototype and such part or component may be stock numbered at a later date.

(ii) This exception may not be used to cover acquisitions of recurring requirements for an item based solely on the fact that the item is not stock numbered nor may it be used to acquire items which have only slightly different characteristics from previously cataloged items.

(b) *Defense Logistics Agency and General Services Administration responsibility to acquire excluded items upon request.* Items other than nuclear ordnance materiel which may be acquired by the other Military Departments at their option under (a) above shall be acquired by DLA or GSA at the requests of the Military Departments.

(c) *Exclusions to Defense Logistics Agency or General Services Administration assignments by agreement.* The Military Departments shall process to the appropriate DLA Center or GSA Support Region for acquisition those service-managed items which do not meet the exception criteria set forth in (a) above, unless by mutual agreement between the cognizant Military Service Inventory Manager and the DLA Center concerned, or the GSA Support Region, the item is determined to be most satisfactorily acquired on a Military Service basis. The Military Departments shall insure that subsequent acquisitions of items previously classified as exceptions under (a) above do in fact continue to meet the exception criteria at the time of the subsequent acquisition. Otherwise, such acquisitions shall be forwarded to DLA or GSA for purchase.

(d) *Exclusions for local purchase of integrated materiel managed items.* While maximum use should be made of DLA and GSA centrally managed items, requiring Departments may purchase locally at their option any DLA or GSA centrally managed, commercially available item, provided: (1) Such action is judged to be in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement; (2) purchases are not made of those types of items identified in section 208.7100-1; (3) for local purchases of DLA and GSA stock items exceeding $100 per line item, a statement of the specific advantage or advantages of the locally purchased item is included in the purchase file; (4) for local purchases of DLA and GSA items exceeding $1,000 per line item, the statement of the specific advantage or advantages of the locally purchased item is reviewed and approved one level above the contracting officer; (5) for local purchases of DLA and GSA items exceeding $5,000 per line item, a waiver request is forwarded to and approved by the applicable manager prior to initiation of the purchase action. These restrictions on local purchases of DLA and GSA items do *not* apply to items coded by DLA and GSA as authorized for local procurement (AACL).

(e) *Addresses for submission of waiver requests.* Requests for waivers under paragraph (d)(5) of this section for making local purchases of DLA and GSA centrally managed items exceeding $5,000 per line item shall be sent to:

For GSA: Commissioner (F), Federal Supply Service, Washington, DC 20406.

For DLA: Director (DLA-OS), Defense Logistics Agency, Alexandria, VA 22304-6100.

[51 FR 46105, Dec. 23, 1986, as amended at 53 FR 1925, Jan. 25, 1988; 53 FR 38246, Sept. 29, 1988]

208.7101 Department of the Army.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment)

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1005 P* Guns, through 30mm.

This partial FSC assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.

1010 P* Guns, over 30mm, up to 75mm

This partial FSC assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns and aircraft gun mounts.

1015 P* Guns, 75mm through 125mm.

This partial FSC assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type guns.

1020 P* Guns over 125mm through 150mm

1025 P* Guns over 150mm through 200mm

1030 P* Guns over 200mm through 300mm
1035 P* Guns over 300mm

These partial FSC assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. They do not apply to naval ordnance type guns.

1040 Chemical Weapons and Equipment
1055 P* Launchers, Rocket and Pyrotechnic.

This partial FSC assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and airborne type, with the exception of 2.75 inch Rocket Launchers which are included in this partial FSC assignment to the Department of the Army.

1090 P Assemblies Interchangeable Between Weapons in Two or More Classes

This partial FSC assignment applies to the following items:

National Stock Number	*Nomenclature*
1090-563-7232	Staff Section, Class
1090-699-0633	Staff Section
1090-796-8760	Power Supply
1090-885-8451	Wrench Corrector
1090-986-9707	Reticle Assembly

1095 P* Miscellaneous Weapons

This partial FSC assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type; line throwing guns (which are under DoD Coordinated Procurement assignment to the Department of the Navy); and aircraft type miscellaneous weapons.

1210 P* Fire Control Directors
1220 P* Fire Control Computing Sights and Devices
1230 P* Fire Control Systems, Complete
1240 P* Optical Sighting and Ranging Equipment
1250 P* Fire Control Stabilizing Mechanisms
1260 P* Fire Control Designating and Indicating Equipment
1265 P* Fire Control Transmitting and Receiving Equipment, Except Airborne
1285 P* Fire Control Radar Equipment, Except Airborne
1290 P* Miscellaneous Fire Control Equipment. The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Manuals/Catalogs. They do not apply to naval ordnance type and aircraft type.
1305 P* Ammunition, through 30mm

This partial FSC assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and ammunition for the MK 11 and MK 12, 20mm gun.

1310 P* Ammunition, over 30mm up to 75mm.

This partial FSC assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type and to 40mm ammunition (which is under DoD procurement assignment to the Navy.) The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1315 P* Ammunition, 75mm through 125mm.

This partial FSC assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1320 P* Ammunition, over 125mm.

This partial FSC assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.

1325 P* Bombs.

This partial FSC assignment applies to Bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned Bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling and packing in excess of Navy owned capacity.

1330 Grenades.
1340 P* Rockets and Rocket Ammunition.

This partial FSC assignment applies to:
66mm Rocket, HEAT, M72.
2.75" Rocket FFAR, Service and Practice.
Heads MK5 and Mods (HEAT).
  HE, M151
  HE, XM229 (17 lb Warhead)
  HE, XM157 (Spotting Red)
  HE, XM158 (Spotting Yellow)
  MK61 Practice (5 lb Slug)
  XM230 Practice (10 lb)
Motors MK4 and Mods (High Performance Aircraft).

MK40 and Mods (Low Performance Aircraft)
3.5 In. Rocket Heat, M35.
Practice, M36
Smoke, WP, M30
4.5 In. Motor, Drill, M24.
HE, M32.
Practice, M33.
Incendiary and toxicological rockets, as listed in Army Supply Bulletins.

It does not apply to Navy assigned rockets as shown in list of assignments to the Navy. However, the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1345 Land Mines.
1365 Military Chemical Agents.
1370 P Pyrotechnics.

This partial FSC assignment does not apply to shipboard and aircraft pyrotechnics.

1375 P Demolition Materials.

This partial FSC assignment is applicable to Blasting Agents and supplies such as:

Bangalore torpedo
Blocks, demolition
Caps, blasting, electric and nonelectric
Charge, cratering
Charge, shaped and demolition
Chests, demolition platoon and squad
Cord detonating
Demolition equipment sets, with ancillary items
Detonators, all types
Dynamite
Firing Devices
Fuze, safety
Kit, demolition
Lighter, fuse
Machine, blasting
Primer, percussion cap

It does not apply to Navy underwater demolition requirements.

1376 P Bulk Explosives.

This partial FSC assignment is applicable to solid propellants and explosives such as:

Ammonium Picrate (Explosive D) JAN-A-166A
Trinitrotoluene (TNT) MIL-T-248A
Tetryl JAN-T-339
Pantaerythrite Tetranitrate (PETN) JAN-P-387
RDX
Composition B
Composition B-3
Pentolite, 50
Composition C-3
Composition A-3
Composition A-4
Nitroguanidine (Picrate)

It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.

1377 P Cartridge and Propellant Actuated Devices and Components.

This partial FSC assignment is applicable to the following devices:

(Reserved pending Services agreement as to items which shall be included in this assignment.)

1380 Military Biological Agents.
1390 P* Fuzes and Primers.

This partial FSC assignment applies to Fuzes and Primers for Army Assigned Ammunition.

It does not apply to naval ordnance type, which is under DoD procurement assignment to the Department of the Navy; and guided missile fuzes.

2210 Locomotives.
2220 Rail Cars.
2240 Locomotive and Rail Car Accessories and Components.
2250 Track Materials, Railroad.
2310 P Passenger Motor Vehicles.
2320 P Trucks and Truck Tractors.

The above two partial Federal Supply Class Assignments apply to tactical vehicles; trucks over 10,000 pounds Gross Vehicle Weight (GVW); and the following types of vehicles:

Bus, convertible to ambulance;
Truck, 4x4, convertible to ambulance;
Truck, 4x4, dump, 9,000 GVW, with cut-down cab.

These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Procurement assignment, and airport crash rescue vehicles, which are under DoD Coordinated Procurement assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Procurement to the General Services Administration.

2330 P Trailers.

This partial FSC assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Procurement assignment, and airport crash rescue trailer units which are under DoD Coordinated Procurement assignment to the Department of the Air Force.

2340 P Motorcycles, Motor Scooters, and Bicycles.

This partial FSC assignment does not apply to bicycles and tricycles.

2350 Tanks and Self-propelled Weapons.
2430 Tractors, Track Laying, High Speed.
2510 P** Vehicular Cab, Body, and Frame Structural Components.

2520 P** Vehicular Power Transmission Components.

2530 P** Vehicular Brake, Steering, Axle, Wheel, and Track Components.

2540 P** Vehicular Furniture and Accessories.

2590 P** Miscellaneous Vehicular Components.

2610 Tires and Tubes, Pneumatic, except Aircraft.

2630 Tires, solid and cushion.

2640 Tire Rebuilding and Tire and Tube Repair Materials.

2805 P** Gasoline Reciprocating Engines, Except Aircraft; and Components.

2910 P** Engine Fuel System Components, Nonaircraft.

2920 P** Engine Electrical System Components, Nonaircraft.

2930 P** Engine Cooling System Components, Nonaircraft.

2940 P** Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.

2990 P** Miscellaneous Engine Accessories, Nonaircraft.

4210 P Fire Fighting Equipment.

This partial FSC assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.

4230 P Decontaminating and Impregnating Equipment.

This partial FSC assignment applies only to items peculiar to chemical warfare.

4240 P Safety and Rescue Equipment.

This partial FSC assignment applies only to military respiratory protective equipment for chemical warfare.

5805 P Telephone and Telegraph Equipment.

This partial FSC assignment applies only to military (wire) equipment, field type.

5815 P Teletype and Facsimile Equipment.

This partial FSC assignment applies only to military (wire) equipment, field type.

5820 P Radio and Television Communication Equipment, except Airborne.

This partial, FSC assignment applies to non-tactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational, and training programs.

5830 P Intercommunication and Public Address Systems: Except Airborne

This partial FSC assignment applies only to military (wire) equipment, field type.

6135 P Batteries, Primary.

This partial FSC assignment applies to MIL type, dry cell batteries, only.

6625 P Electrical and Electronic Properties Measuring and Testing Instruments.

This partial FSC assignment applies only to instruments for testing military (wire) equipment, field type.

6645 P Time Measuring Instruments.

This partial FSC assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefor:

Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.

6660 P Meteorological Instruments and Apparatus.

Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6665 P Hazard-Detecting Instruments and Apparatus.

This partial FSC assignment applies only to items peculiar to chemical warfare.

6695 P Combination and Miscellaneous Instruments.

This partial FSC assignment applies to jewel bearings only.

6820 P Dyes.

This partial FSC assignment applies only to items peculiar to chemical warfare.

6910 P Training Aids.

This partial FSC assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives and chemical and biological warfare.

6920 P Armament Training Devices.

This partial FSC assignment applies to armament training devices as listed in DA Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in DA catalogs SC 6010, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons.

6940 P Communication Training Devices.

This partial FSC assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.

8130 P Reels and Spools.

This partial FSC assignment applies only to reels and spools for military (wire) equipment, field type.

8140 P Ammunition Boxes, Packages, and Special Containers.

This partial FSC assignment applies only to boxes, packages and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in DA Catalog SC 8140 IL and SC 8140 ML.

*For purposes of procurement, Naval Ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance procured from the Army).

**These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC-2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these Federal Supply Classes are assigned to the Defense Logistics Agency (Defense Construction Supply Center).

208.7102 Department of the Navy.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment.)

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of government funds.)

1095 P Miscellaneous Weapons

This partial FSC assignment applies to line throwing guns only.

1310 P Ammunition, over 30mm up to 75mm.

This partial FSC assignment applies only to reels and spools for military

1325 P Bombs.

This partial FSC assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. With respect to this assignment the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control-smoke and incendiary munitions and for other loading, assembling and packing in excess of Navy-owned capacity.

1340 P Rockets and Rocket Ammunition.

This partial FSC assignment applies to:

Fuze, Rocket, V.T., MK93-0

2.25 In. Rocket SCAR, Practice
  Heads MK3 and Mods
  Motors MK15 and Mods
  MK16 and Mods

5 In. Rocket HVAR, service and practice
  Heads MK2 and Mods (common) MK6 and Mods (GP)
  MK4 and Mods (smoke) MK25 and Mods (ATAR)
  Motors MK10 and Mods

5 In. Rocket FFAR service and practice
  Heads MK24 and Mods (General Purposes)
  MK32 and Mods (Shaped Charged)
  MK26 and Mods (Illum)
  Motor MK16 and Mods

With respect to this assignment the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1390 P Fuzes and Primers.

This partial FSC assignment applies to fuzes and primers for Navy assigned ammunition.

1550 P Drones.

This partial FSC assignment applies only to Drone, Model BQM34E.

1905 P Combat Ships and Landing Vessels.

This partial FSC assignment applies to landing vessels only.

1910 P Transport Vessels, Passenger and Troop.

This partial FSC assignment applies to ferryboats only.

1920 Fishing Vessels.

1925 Special Service Vessels.

1930 Barges and Lighters, Cargo

1935 P Barges and Lighters, Special Purpose.

This partial FSC assignment does not apply to Derricks, Pile Drivers, Rock Cutters, Concrete Mixing Plants, Mechanical Bank Grader Barges, Other Bank Revetment Barges; and Barge Power Plants.

1940 Small Craft.

1945 P Pontoons and Floating Docks.

This partial FSC assignment applies only to Naval Facilities Engineering Command Type Pontoons.

1950 Floating Drydocks.

1990 P Miscellaneous Vessels.

This partial FSC assignment applies to commercial sailing vessels only.

2010 Ship and Boat Propulsion Components.

2020 Rigging and Rigging Gear.

2030 Deck Machinery.

2040 Marine Hardware and Hull Items.

2060 Commercial Fishing Equipment.

2090 Miscellaneous Ship and Marine Equipment.

2820 P Steam Engines, Reciprocating, and Components.

This partial FSC assignment applies to Marine Main Propulsion Steam Engines only.

2825 P Steam Turbines and Components.

This partial FSC assignment applies to Marine Steam Turbines only.

4210 P Fire Fighting Equipment.

This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.

4410 P Industrial Boilers.

This partial FSC assignment applies only to Boilers for use aboard those ships assigned to the Navy for coordinated procurement.

4420 P Heat Exchangers and Steam Condensers.

This partial FSC assignment applies only to Heat Exchangers for use aboard those ships assigned to the Navy for coordinated procurement.

4925 P Ammunition Maintenance and Repair Shop Specialized Equipment.

This partial FSC assignment applies to sets, kits and outfits of tools and equipment for explosive ordnance as defined in pertinent Military Service regulations and documents.

5821 P Radio and Television Communication Equipment, Airborne.

This partial FSC assignment applies to the following commercially developed radio sets. (The term "commercially developed" means that no government funds were provided for development purposes.) HF-101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113; ARC-94, 102, 105, 110, 112, 119, 120; MRC-95, 108; VC-102, 104, 105, 106, 109, 110; and components of the foregoing including the 490T antenna coupler.

6125 P Converters, Electrical, Rotating.

This partial FSC assignment applies only to Motor-Generator Sets for use aboard ships assigned to the Navy for coordinated procurement.

6320 P Shipboard Alarm and Signal System.

This partial FSC assignment applies only to Alarm Systems; Fire Alarm Systems; Indicating Systems; Telegraph Systems (Signal and Signaling) (Less Electronic Type) for use aboard ships assigned to the Navy for coordinated procurement.

6605 P Navigational Instruments.

This partial FSC assignment applies only to lifeboat and raft compasses; aircraft sextants; Hand Leads (Soundings); Lead Reels; Sounding Machines and Pelorus Stands for use aboard ships assigned to the Navy for coordinated procurement.

6645 P Time Measuring Instruments.

This partial FSC assignment applies to the following instruments, cases and spare parts therefor:

Chronometers including gimbal, padded and
make break circuit.
Clocks, Alarm; boat; deck; direct reading;
electrical; floor; interval timer; marine; mechanical; master control; master program;
master regulating; mechanical message center;
nurses; program; shelf; stop; wall; watchman's.
Counters, time period.
Meters; engine running time; hour recording;
and electrical time totalizing.
Timers; bombing; engine hours; sequential;
stop; and program.
Program control instrument.
Cases; chronometer, including gimbal and
padded; chronometer carrying; make-break
circuit chronometer.
Cans; chronometer shipping and storage.
Clock keys; clock movements; clock motors.

6650 P Optical Instrument.

This partial FSC assignment applies only to Stands, Telescope, for use aboard ships assigned to the Navy for coordinated procurement.

6660 P Meteorological Instruments and Apparatus.

Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed of for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6665 P Hazard-Detecting Instruments and Apparatus.

This partial FSC assignment applies only to Hazard Determining Safety Devices, for use aboard ships assigned to the Navy for coordinated procurement.

8140 P Ammunition Boxes, Packages, and Special Containers.

This partial FSC Assignment applies only to boxes, packages and containers for 40mm ammunition.

208.7103 Department of the Air Force.

Federal Supply Class Code and Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment.)

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).

1550 P Drones.

This partial assignment applies only to the following model drones: Model 147; Model 154; BQM 34A and MQM 34D.

2320 P Trucks and Truck Tractors.

This partial FSC assignment applies only to Airport Crash Rescue Vehicles.

2330 P Trailers.

This partial FSC assignment applies only to Airport Crash Rescue Trailer Units.

4210 P Fire Fighting Equipment.

This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.

6660 P Meteorological Instruments and Apparatus.

Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of the assignment the developing Department is the Department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.

6710 P* Cameras, Motion Picture.

This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6720 P* Cameras, Still Picture.

This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.

6730 P* Photographic Projection Equipment.

This partial FSC assignment does not apply to 35mm Theater Projectors.

6740 * Photographic Developing and Finishing Equipment.

6760 * Photographic Equipment and Accessories.

6780 * Photographic Sets, Kits, and Outfits.

8820 P Live Animals Not Raised For Food.

This partial FSC assignment applies only to the following types of working dogs: scout, sentry, patrol, mine/tunnel, tracker, detector-narcotic/contraband, sledge, bloodhound, water dog and patrol/detector.

*This partial FSC assignment does not apply to Photographic Equipment controlled by the Congressional Joint Committee on Printing, and Micro-Film Equipment and Supplies.

208.7104 Defense Logistics Agency.[1]

Federal Supply Class Code	*Commodity*	*DLA Center*[6]
FSC ("P" after the FSC number indicates a partial FSC assignment.)		
2230	Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410	Tractor, Full Track, Low Speed.	DCSC
2420	Tractors, Wheeled	DCSC
2510 P[2]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P[2]	Vehicular Power Transmission Components.	DCSC
2530 P[2]	Vehicular Brake, Steering, Axle, Wheel and Track Components.	DCSC
2540 P[2]	Vehicular Furniture and Accessories.	DCSC
2590 P[2]	Miscellaneous Vehicular Components.	DCSC
2805 P[2]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P[2]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P[2]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P[2]	Engine Cooling System Components, Nonaircraft.	DCSC
2940 P[2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P[2]	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020	Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030	Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040	Miscellaneous Power Transmission Equipment.	DCSC
3110	Bearings, Antifriction Unmounted.	DISC
3120	Bearings, Plain Unmounted.	DISC
3130	Bearings, Mounted	DISC
3210	Sawmill and Planing Mill Machinery.	DGSC
3220	Woodworking Machines	DGSC
3230	Tools and Attachments for Woodworking Machinery.	DGSC
3405 P[5]	Saws and Filing Machines.	DGSC
3408 P[5]	Machining Centers and Way-Type Machines.	DGSC

Federal Supply Class Code	Commodity	DLA Center[6]
3410 P[8]	Electrical and Ultrasonic Erosion Machines	DGSC
3411 P[8]	Boring Machines	DGSC
3412 P[8]	Broaching Machines	DGSC
3413 P[8]	Drilling and Tapping Machines.	DGSC
3414 P[8]	Gear Cutting and Finishing Machines.	DGSC
3415 P[8]	Grinding Machines	DGSC
3416 P[8]	Lathes	DGSC
3417 P[8]	Milling Machines	DGSC
3418 P[8]	Planers and Shapers	DGSC
3419 P[8]	Miscellaneous Machine Tools.	DGSC
3422 P[8]	Rolling Mills and Drawing Machines.	DGSC
3424 P[8]	Metal Heat Treating Equipment.	DGSC
3426 P[8]	Metal Finishing Equipment.	DGSC
3431	Electric Arc Welding Equipment.	DGSC
3432 P[8]	Electric Resistance Welding Equipment.	DGSC
3433 P[8]	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436 P[8]	Welding Positioners and Manipulators.	DGSC
3438 P[8]	Miscellaneous Welding Equipment.	DGSC
3439 P[8]	Miscellaneous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441 P[8]	Bending and Forming Machines.	DGSC
3442 P[8]	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443 P[8]	Mechanical Presses, Power Driven.	DGSC
3444 P[8]	Manual Presses	DGSC
3445 P[8]	Punching and Shearing Machines.	DGSC
3446 P[8]	Forging Machinery and Hammers.	DGSC
3447 P[8]	Wire and Metal Ribbon Forming Machinery.	DGSC
3448 P[8]	Riveting Machines	DGSC
3449 P[8]	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450 P[8]	Machine Tools, Portable	DGSC
3455 P[8]	Cutting Tools for Machine Tools.	DGSC
3456 P[8]	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460 P[8]	Machine Tool Accessories.	DGSC
3461 P[8]	Accessories for Secondary Metalworking Machinery.	DGSC
3465 P[8]	Production Jigs, Fixtures and Templates.	DGSC
3470 P[8]	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Reparing Equipment	DGSC
3530	Industrial Sewing Machine & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P[8]	Industrial Marking Machines.	DGSC
3620 P[8]	Rubber and Plastics Working Machinery.	DGSC
3635 P[8]	Crystal and Glass Industries Machinery.	DGSC
3650 P[8]	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660 P[8]	Industrial Size Reduction Machinery.	DGSC
3680 P[8]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P[8]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P[8]	Industrial Assembly Machines.	DGSC
3694 P[8]	Clean Work Stations, Controlled Environment & Related Equipment.	DCSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment.	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels.	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC
3830	Truck and Tractor Attachments.	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC

Federal Supply Class Code	*Commodity*	*DLA Center*[6]
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine.	DISC
4030	Fittings for Rope, Cable and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment.	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P[3]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units.	DCSC
4540	Miscellaneous Plumbing, Heating and Sanitation Equipment.	DCSC
4610	Water Purification Equipment.	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment.	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Tubing, Flexible.	DCSC
4730	Fittings and Specialities; Hose, Pipe and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials.	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs.	DISC
5365	Rings, Shims and Spacers.	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating.	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures.	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5660	Fencing, Fences and Gates.	DCSC
5680 P	Miscellaneous Construction Materials. This partial FSC assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DSA managed items in GSA assigned classes.)	DCSC
5905	Resistors	DESC
5910	Capacitors.	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors.	DESC
5925	Circuit Breakers.	DESC
5930	Switches.	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals, and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezoelectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices.	DESC
5965	Headsets, Handsets, Microphones and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies.	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies: Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC

Federal Supply Class Code	Commodity	DLA Center[6]
6110	Electrical Control Equipment.	DGSC
6115 P[9]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers: Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures.	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6504[4]	Drugs, Biologicals, and Official Reagents.	DPSC
6508[4]	Medicated Cosmetics and Toiletries.	DPSC
6510[4]	Surgical Dressing Materials.	DPSC
6515[4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520[4]	Dental Instruments, Equipment, and Supplies.	DPSC
6525[4]	X-Ray Equipment and Supplies: Medical, Dental and Veterinary	DPSC
6530[4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540[4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545[4]	Medical Sets, Kits, and Outfits.	DPSC
6630	Chemical Analysis Instruments.	DGSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC
6810[7]	Chemicals	DFSC & DGSC
6820	Dyes	DGSC
6830	Gases: Compressed and Liquefied.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850[7]	Miscellaneous Chemical Specialties.	DFSC & DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits and Outfits: Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7660	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter.	DGSC
8110	Drums and Cans	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics	
	FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings.	
	FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials.	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose	
	FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accesssories, Women's.	DPSC
8450	Children's and Infants' Apparel and Accessories.	DPSC
8455	Badge and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905[5]	Meat, Poultry, and Fish	DPSC

Federal Supply Class Code	Commodity	DLA Center [6]
8910 [5]	Dairy Foods and Eggs	DPSC
8915 [5]	Fruits and Vegetables	DPSC
8920 [5]	Bakery and Cereal Products.	DPSC
8925 [5]	Sugar, Confectionery and Nuts.	DPSC
8930 [5]	Jams, Jellies, and Preserves.	DPSC
8935 [5]	Soups and Bouillons	DPSC
8940 [5]	Special Dietary Foods and Food Speciality Preparations.	DPSC
8945 [5]	Food Oils and Fats	DPSC
8950 [5]	Condiments and Related Products.	DPSC
8955 [5]	Coffee, Tea, and Cocoa	DPSC
8960 [5]	Beverages, Nonalcoholic	DPSC
8970 [5]	Composite Food Packages.	DPSC
8975 [5]	Tobacco Products	DPSC
9110	Fuels, Solid	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils	DFSC
9150	Oils and Greases: Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials.	DGSC
9330	Plastics Fabricated Materials.	DGSC
9340	Glass Fabricated Materials.	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420 P	Fibers: Vegetable, Animal and Synthetic. This partial FSC assignment applies only to raw cotton and raw wool.	DPSC
9430 P	Miscellaneous Crude Animal Products, Inedible. This partial FSC assignment applies only to crude hides.	DPSC
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel.	DISC
9515	Plate, Sheet, and Strip: Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil: Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plate, Sheet, Strip, Foil and Wire: Precious Metal.	DISC
9620 P	Minerals, Natural and Synthetic. This partial FSC assignment applies only to crude petroleum and crude shale oil.	DFSC
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

Footnotes for List in 208.7104

[1] These assignments do not apply to items decentralized by the DLA Center Commander, *i.e.*, designated for purchase by each Military Department, and to those items in DLA assigned Federal Supply Classes, which may be assigned to GSA for supply management. In addition, see 208.7100-2 which describes conditions under which a Military Service may purchase (contract for) Military Service supply managed items in DLA assigned Federal Supply Classes. See notes 2 and 3 below for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940 and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated procurement to the Department of the Army. In addition, the assignment in FSC-2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated procurement to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a Military Department. The procurement responsibility for such equipment is assigned to the Department which developed or sponsored its development.

[4] The Defense Logistics Agency has procurement responsibility for all the items in the Classes of FS Group 65. In addition, DLA has procurement responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-Group 65 Classes where the Military medical services have the sole or prime interest in such items. The specific item coverage of these Non-Group 65 Items is published in the DOD Section of the Federal Supply Catalog for Medical Material C3-1 through C3-12, inclusive.

[5] This assignment includes Health and Comfort Items listed in AR 700-23. It also includes resale items for commissary stores (including brand name items).

[6] DLA Centers are identified as follows: DCSC—Defense Construction Supply Center. DESC—Defense Electronics Supply Center. DFSC—Defense Fuel Supply Center. DGSC—Defense General Supply Center. DISC—Defense Industrial Supply Center. DPSC—Defense Personnel Support Center.

[7] DFSC is responsible for procurement of only petroleum base items in FSC 6810 and FSC 6850.

[8] This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data Lists of each respective Service.

[9] This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Sources (MPEGS). The procurement direction responsibility for MEPGS is assigned to the DoD Project Manager, Mobile Electric Power by DoD Directive 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL-STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700-101, AFR 400-50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating procurement.

208.7105 Defense Nuclear Agency.[1]

NUCLEAR ORDNANCE

Federal Supply Class Code and Commodity

1105 Nuclear Bombs.
1110 Nuclear Projectiles.
1115 Nuclear Warheads and Warhead Sections.
1125 Nuclear Demolition Charges.
1127 Nuclear Rockets.
1130 Conversion Kits, Nuclear Ordnance.
1135 Fuzing and Firing Devices, Nuclear Ordnance.
1140 Nuclear Components.
1145 High Explosive Charges, Propellants, and Detonators: Nuclear Ordnance.
1190 Specialized Test and Handling Equipment, Nuclear Ordnance.
1195 Miscellaneous Nuclear Ordnance.

208.7106 General Services Administration.[1]

Federal Supply Class Code and Commodity

FSC ("P" after FSC number indicates partial FSC assignment.)
2310 P Passenger Motor Vehicles.
2320 P Trucks and Truck Tractors.

The above two partial Federal Supply Class Assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Procurement to the Department of the Army.

Bus, convertible to ambulance.
Truck 4 x 4, convertible to ambulance.
Truck 4 x 4, dump, 9,000 pounds GVW, with cut-down cab.

(See Army Coordinated Procurement assignments in FSC 2310 and FSC 2320.)

3540 Wrapping and Packaging Machinery.
3550 Vending and Coin Operated Machines.
3590 Miscellaneous Service and Trade Equipment.
3750 Gardening Implements and Tools.
5110 Hand Tools, Edged, Nonpowered.
5120 Hand Tools, Nonedged, Nonpowered.
5130 Hand Tools, Power Driven.
5133 Drill Bits, Counterbores, and Countersinks: Hand and Machine.
5136 Taps, Dies and Collects: Hand and Machine.
5140 Tool and Hardware Boxes.
5180 Sets, Kits and Outfits of Hand Tools.
5210 Measuring Tools, Craftmen's.
5345 Disks and Stones, Abrasive.
5350 Abrasive Materials.
5610 Mineral Construction Materials, Bulk.
5620 Building Glass, Tile, Brick and Block.
5630 Pipe and Conduit, Nonmetallic.
5640 Wallboard, Building Paper, and Thermal Insulation Materials.
5650 Roofing and Siding Materials.
5670 Architectural and Related Metal Products.
5680 P[2] Miscellaneous Construction Materials.
7105 Household Furniture.
7110 Office Furniture.
7125 Cabinets, Lockers, Bins and Shelving.
7195 Miscellaneous Furniture and Fixtures.
7220 Floor Coverings.
7230 Draperies, Awnings, and Shades.
7240 Household and Commercial Utility Containers.
7290 Miscellaneous Household and Commercial Furnishings and Appliances.
7330 Kitchen Hand Tools and Utensils.
7340 Cutlery and Flatware.
7350 Tableware.
7410 Punched Card System Machines.
7420 Accounting and Calculating Machines.
7430 Typewriters and Office-type Composing Machines.

This FSC assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.

7450 Office-type Sound Recording and Reproducing Machines.
7460 Visible Record Equipment.
7490 Miscellaneous Office Machines.

This FSC assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.

7510 Office Supplies.

This FSC assignment does not apply to Office Supplies, including special inks, when DoD requirements of such items are procured through Government Printing Office channels.

7520 Office Devices and Accessories.

This FSC assignment does not apply to office devices and accessories when DoD requirements of such items are procured through Government Printing Office channels.

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[1] In addition to the above, assignments to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

[1] These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned Federal Supply Classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data Lists. In addition, see 208.7100-2 which describes conditions under which a Military Service may purchase (contract for) Military Service Supply managed items in GSA assigned Federal Supply Classes.

[2] This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

7530 Stationery and Record Forms.

This FSC assignment does not apply to Stationery and Record Forms when DoD requirements of such items are procured through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.

7710 Musical Instruments.
7720 Musical Instrument Parts and Accessories.
7730 Phonographs, Radios, and Television Sets: Home Type.
7740 Phonograph Records.
7810 Athletic and Sporting Equipment.
7820 Games, Toys, and Wheeled Goods.
7830 Recreational and Gymnastic Equipment.
7910 Floor Polishers and Vacuum Cleaning Equipment.
7920 Brooms, Brushes, Mops and Sponges.
7930 Cleaning and Polishing Compounds and Preparations.
8010 Paints, Dopes, Varnishes, and Related Products.
8020 Paint and Artists Brushes.
8030 Preservative and Sealing Compounds.
8040 Adhesives.
8105 Bags and Sacks.
8115 Boxes, Cartons and Crates.
8135 Packaging and Packing Bulk Materials.
8510 Perfumes, Toilet Preparations and Powders.
8520 Toilet Soap, Shaving Preparations and Dentifrices.
8530 Personal Toiletry Articles.
8540 Toiletry Paper Products.
8710 Forage and Feed.
8720 Fertilizers.
8730 Seeds and Nursery Stock.
9310 Paper and Paperboard.
9905 Signs, Advertising Displays, and Identifications Plates.
9910 Jewelry.
9915 Collectors' Items.
9920 Smokers' Articles and Matches.

Subpart 208.72—Acquisition for NASA

208.7200 Authorization and policy.

(a) NASA is authorized by Pub. L. 85-568 to use the acquisition services, personnel, equipment and facilities of the Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Departments in the use of acquisition services, equipment and facilities.

(b) The Department will cooperate fully with NASA in making their acquisition services, equipment, personnel and facilities available on the basis of mutual agreement.

(c) The Departments will not claim reimbursement for administrative costs incident to acquisitions for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When acquiring supplies or services for NASA or performing field service functions in support of NASA contracts, the Department concerned will use its own methods, except when required by the terms of the agreement involved.

(e) The Departments normally will use their own funds when acquiring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

208.7201 NASA purchase request and acceptance.

(a) The NASA-Defense Purchase Request (NASA Form Number 523) will be used by NASA for requesting acquisition of supplies or services, from all activities of the Departments.

(b) Except as provided in (d) below, within 30 days after receipt of a NASA-Defense Purchase Request, the Department concerned will forward to the initiator of the request a DD Acceptance of MIPR Form, DD Form 448-2, in quadruplicate in accordance with instructions contained in 208.7009. Each DD Form 448-2 will show the action being taken or to be taken to fill the requirement and the name and complete address to the Department of Defense acquisition activity for future direct contact by the initiator.

(c) To the extent feasible, all documents including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer Between Appropriations and/or Funds) billings will reference the NASA-Defense Purchase Request Number and the item number when appropriate.

(d) Acceptance by the Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7202 Changes in estimated total prices.

When a Department determines that the estimated total price (Block 9, NASA Form 523) of the items to be acquired for NASA is not sufficient to cover the required reimbursement, or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, an amendment to the NASA-Defense Purchase Request will be forwarded to the contracting activity.

208.7203 Inquiries.

Inquiries and correspondence will be directed to the NASA originating office.

208.7204 Payments.

Payments to the Departments for supplies and services furnished or acquired for NASA will be effected on the basis of Standard Form 1080 billings submitted to the NASA office designated in Block 11 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Billings will be supported in the same manner as billings between Departments.

Subpart 208.73—Miniature and Instrument Ball Bearings

208.7301 Definitions.

Domestic manufacture means miniature and instrument ball bearings manufactured in the United States or Canada. When a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada.

Miniature and instrument ball bearings are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics.

208.7302 Policy.

It has been determined that defense requirements for miniature and instrument ball bearings must be acquired from domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of miniature and instrument ball bearings and all acquisitions of items containing miniature and instrument ball bearings shall include, except as provided in 208.7303 below, a requirement that such ball bearings delivered under the contract be of domestic manufacture only.

208.7303 Procedures.

(a) The clause set forth at 252.208-7000, Required Sources for Miniature and Instrument Ball Bearings, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being acquired does not contain miniature or instrument ball bearings;

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured miniature or instrument ball bearings;

(3) In small purchases using small purchase procedures, other than in purchase of bearings as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipments or systems (e.g., repair parts) or

(ii) Purchases of bearings as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic ball bearings, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using ball bearings of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic ball bearings or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic bearings.

Subpart 208.74—Precision Components for Mechanical Time Devices

208.7401 Definitions.

Domestic manufacture means precision components for mechanical time devices manufactured in the United States or Canada. When a mechanical timing assembly is involved, all components of the assembly must also have been manufactured in the United States or Canada.

Precision components for mechanical time devices are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 64 rms. Examples of such precision components include: gears, pinions, posts, and plates. Precision components subject to the provisions of this subpart are those which are included in fuzes, boosters, and aircraft clocks in the following Federal Supply Classes:

FS Class and Description	
1305	Ammunition through 30mm.
1310	Ammunition, over 30mm up to 75mm.
1315	Ammunition, 75mm through 125mm.
1320	Ammunition over 125mm.
1325	Bombs.
1330	Grenades.
1340	Rockets and Rocket Ammunition.
1345	Land Mines.
1390	Fuzes and Primers.
6645	Time Measuring Instruments (aircraft clocks only).

208.7402 Policy.

It has been determined that defense requirements for precision components for mechanical time devices must be acquired from domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of precision components for mechanical time devices and all acquisitions of items containing precision components for mechanical time devices shall include, except as provided in 208.7403 below, a requirement that such components delivered under the contract be of domestic manufacture only.

208.7403 Procedures.

(a) All acquisitions of items in the Federal Supply Classes listed above or any subassembly, component, or part thereof shall provide that precision components for mechanical time devices, in the quantities and of the type and sizes (including tolerances) required to produce the end item being supplied, be of domestic manufacture and incorporated into the items delivered by the contractor and subcontractor at every tier. To accomplish this, the clause set forth at 252.208-7001, Required Sources for Precision Components for Mechanical Time Devices, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being procured does not contain precision components for mechanical time devices;

(2) When the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured precision components for mechanical time devices;

(3) In small purchases using small purchase procedures, other than in purchase of precision components for mechanical time devices as the end item;

(4) Purchases of standard commercial items, other than—

(i) Those which are intended for use as components or subassemblies of defense equipment or systems (e.g., repair parts); or

(ii) Purchases of precision components for mechanical time devices as the end item; or

(5) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract which includes the clause required by (a) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic components. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic precision components for mechanical time devices and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using precision components for mechanical time devices of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic precision components for mechanical time devices or subassemblies or parts is necessary.

Subpart 208.75—High-Purity Silicon

208.7501 Definitions.

Domestic manufacture means high-purity silicon manufactured in the United States or Canada. When an item or subassembly containing high-purity silicon is involved, all such silicon (polycrystal and single crystal) incorporated in the item or subassembly must also have been manufactured in the United States or Canada.

High-purity silicon is N or P type and has a resistivity greater than 3000 ohm-centimeter.

208.7502 Policy.

It has been determined that defense requirements for High-Purity Silicon must be acquired from qualified domestic manufacturing sources to the maximum extent practicable. Accordingly, all acquisitions of high-purity silicon and all acquisitions of items containing high-purity silicon shall include, except as provided in 208.7503 below, a requirement that such high-purity silicon and high-purity silicon incorporated in items containing high-purity silicon delivered under the contract be of domestic manufacture only.

208.7503 Procedures.

(a) The clause set forth at 252.208-7002, Required Sources for High-Purity Silicon, shall be inserted in all contracts except:

(1) When the contracting officer knows that the item being acquired does not contain high-purity silicon;

(2) In small purchases using small purchase procedures, other than in purchase of high-purity silicon as the end item;

(3) Purchase of standard commercial items, other than purchases of high-purity silicon as the end item; or

(4) Purchases made overseas for overseas use.

(b) Subsequent to the award of a contract, the contracting officer may waive the requirements set forth at 252.208-7002, Required Sources for High-Purity Silicon. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic high-purity silicon, and either:

(1) The production of such subassemblies or end items in the performance of all or a part of the contract using high-purity silicon of domestic manufacture would interfere with the normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(2) The delivery schedule under the contract or subcontract is such that use of other than domestic high-purity silicon is necessary. The contracting officer should grant waivers only to

the extent and for the period of time necessary to permit the contractor to acquire and use domestic high-purity silicon.

Subpart 208.76—High Carbon Ferrochrome (HCF)

208.7601 Definitions.

U.S. manufacture means high carbon ferrochrome (HCF) manufactured in the United States, regardless of the source of the chrome ore. HCF means ferrochromium alloy that contains three percent or more carbon and 50 percent or more chromium.

208.7602 Policy.

It has been determined that defense requirements for HCF must be acquired from U.S. manufacturing sources (to the maximum extent practical). Accordingly, all acquisitions of HCF and all acquisitions of items containing HCF shall include, except as provided in 208.7603 below, a requirement that such HCF and HCF incorporated in items delivered under the contract be of U.S. manufacture only.

208.7603 Procedures.

(a) The clause set forth at 252.208-7003, Required Sources of HCF, shall be inserted in all contracts except:

(1) When the Contracting Officer knows that the item being acquired does not contain HCF;

(2) In small purchases using small purchase procedures other than in purchase of HCF as the end item;

(3) Purchase of standard commercial end items, other than purchases of HCF as the end item, or steel plate, sheet or ingots and the like that incorporate HCF;

(4) Purchases made overseas for overseas use; or

(5) In cases where DoD has memoranda of understanding (MOU)/offset agreements with U.S. NATO Allies and nondomestic HCF is incorporated in the end item being furnished in support of defense contracts.

(b) Subsequent to the award of a contract, the Contracting Officer may waive the requirements set forth at 252.208-7003, Required Sources for HCF. Such waiver may be granted on a case-by-case basis when adequate U.S. supplies of HCF are not available to meet DoD needs on a timely basis. Such waivers will only be granted to the extent and for the period of time necessary to permit the contractor to acquire and use U.S. HCF.

Subpart 208.77—Utilization of Government-Owned Precious Metals

208.7701 Definitions.

Defense Industrial Supply Center (DISC) means the Defense Logistics Agency field activity which is the assigned Commodity Integrated Materiel Manager for refined precious metals and is responsible for the storage and issue of such materiel.

Refined precious metal means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium in bullion, granulation or sponge form which has been purified to at least .999 percentage of fineness.

208.7702 Policy.

(a) This section establishes uniform policy, guidance, and procedures for implementing requirements of the Department of Defense Precious Metals Recovery Program (PMRP) concerning the utilization of PMRP recovered precious metals as Government-furnished material (GFM) in contracts as provided in DoD Directive 4160.22, "Recovery and Utilization of Precious Metals", December 1, 1976, and the related DoD Instruction 4140.41, "Government-Owned Materiel Assets Utilized as Government-Furnished Materiel for Major Acquisition Programs", July 26, 1974.

(b) It is the policy of the Department of Defense that DoD Components participate in the PMRP to the maximum extent and promote optimum economic utilization of available Government-owned precious metals as Government-furnished material in lieu of contractor-furnished precious metals in production contracts.

(c) In order to realize more cost-effective contracting, DoD-refined precious metal assets shall be utilized in lieu of open market contracting in acquisition programs for military-designed or commercial material when use of Government-furnished material

(GFM) is the more cost-effective manner to accomplish the task, or is otherwise in the Government's best interest. The DISC issue price of GFM precious metals is normally significantly lower than the commercial market price.

208.7703 Applicable procedures.

(a) To assure maximum utilization of PMRP recovered precious metals as GFM in contracts for items which require those precious metals cited in (d) below in their manufacture, the provision in 252.208-7004 shall be inserted in solicitations for items in the Federal Supply Groups listed in (c) below or any subassembly, component, or part thereof except: when using small-purchase procedures; when the contracting officer has determined, through the end item inventory manager, in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21-M, that the required precious metals are not available from DISC; or when the contracting officer knows that the supplies being acquired do not require precious metals in their manufacture.

(b) When an offeror advises of a precious metals requirement in accordance with 252.208-7004, the contracting officer shall have the end item inventory manager contact the DISC Precious Metal Inventory Manager (M), in accordance with the procedures in Chapter XVII of the Defense Utilization and Disposal Manual, DoD 4160.21-M, to determine availability of required precious metal assets and current GFM unit prices. If the precious metals are available the contracting officer shall evaluate offers and award the contract on the basis of that offer which is in the best interest of the Government.

(c) *Federal Supply Groups.* Acquisition of items in the following Federal Supply Groups are subject to the above-prescribed policy and procedures:

FS	*Groups and Description.*
12	Fire Control Equipment.
14	Guided Missiles.
15	Aircraft and Airframe Structural Components.
16	Aircraft Components and Accessories.
17	Aircraft launching, Landing, and Ground Handling Equipment.
18	Space Vehicles.
20	Ship and Marine Equipment.
28	Engines, Turbines and Components.
29	Engine Accessories.
31	Bearings.
34	Metalworking Machinery.
58	Communications, Detection, and Coherent Radiation Equipment.
59	Electrical and Electronic Equipment Components.
61	Electric Wire and Power and Distribution Equipment.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
68	Chemicals and Chemical Products.
84	Clothing, Individual Equipment, and Insignia.
95	Metal Bar, Sheets, and Shapes.

(d) *Refined precious metals.* The following refined precious metals are currently managed by DISC:

Precious Metal and National Stock Number (NSN)

Silver Bullion/Granules—9660-00-106-9432
Gold Bullion/Granules—9660-00-42-7733
Platinum Granules—9660-00-042-7768
Platinum Sponge—9660-00-151-4050
Palladium Granules—96600-00-042-7765
Rhodium Sponge-96600 01-011-2625
Iridium Sponge—9600-01-011-1937
Ruthenium Sponge—96600-01-039-0313

Subpart 208.78—Forging and Welded Shipboard Anchor Chain Items Used for Military Application for Combat and Direct Combat Support Items

208.7801 Definitions.

Domestic manufacture means forging and welded shipboard anchor chain items manufactured in the United States and Canada.

End item means a final combination of end products, component parts, and/or materials which is ready for its intended use per JCS Publication #1 (DoD Dictionary of Military and Associated Terms).

208.7802 Policy.

It has been determined that defense requirements for the forging and welded shipboard anchor chain items listed in 208.7802-1 below must be acquired from domestic sources (United States and Canada) to the maximum extent practical. Accordingly, all acquisitions of these forging items and all acquisitions of items containing these forging and welded shipboard anchor chain items shall include, except as provided in 208.7803 below, a requirement that such items and forging items incorporated in end items delivered under the contract be of domestic manufacture only. This restriction does not include forgings used for commercial vehicles (such as commercial cars and trucks) or to noncombat support military vehicles.

208.7802-1 List of DoD forging and welded shipboard anchor chain items that must be acquired from domestic sources (United States and Canada).

Shipboard Forged DiLok and Welded Anchor Chain (smaller than four inches in diameter)
Ship propulsion shafts (excluding service and landing craft shafts)
Periscope tubes
Ring forgings for bull gears greater than 120 inches in diameter
Large caliber, thick-walled cannon, 105mm through 8-inch forgings listed below:
  Preform forgings
  Gun tube forgings
  Muzzle brake forgings
  Breach ring forgings
60mm and 81mm mortar forgings listed below:
  Bipod forgings
  Base plate forgings
  Body yoke forgings
Small caliber weapons forgings listed below:
  Barrel extensions
  Bolts
  Receivers
  Sights/handles, etc.
Tank and automotive forgings listed below:
  Turret rings
  Road arms
  Final drive gears
  Shafts
  Track shoes
  Axle shafts
  Flywheels
  Connecting rods
  Crankshafts
  Roadwheels
  Spindles
  Torsion bars

[51 FR 46105, Dec. 23, 1986, as amended at 53 FR 38203, Sept. 29, 1988]

208.7803 Procedures.

(a) The clause set forth at 252.208-7005, Required Sources for Forging and Welded Shipboard Anchor Chain Items, shall be inserted in all contracts except—

(1) When the contracting officer knows that the item being acquired does not contain forging items listed in 208.7802-1;

(2) When purchases are made overseas for overseas use;

(3) If the quantity being acquired is determined to be greater than that required to maintain the U.S. defense mobilization base (provided the quantity above mobilization base needs constitutes an economical buy quantity), such greater quantities will not be subject to the U.S., Canadian restriction and shall be awarded competitively to the maximum practical extent. NATO and other qualifying countries may compete for the excess quantities consistent with Part 225 of this Supplement.

(b) A Canadian firm may bid on and supply any of the restricted items if:

(1) It normally produces similar items or it is currently producing the item in support of DoD contracts (as prime or subcontractor), and

(2) It agrees to become (upon receiving a contract/order) a planned producer under DoD's Industrial Preparedness Program (IPP), if it is not already a planned producer for the item.

(c) Subsequent to the award of a contract, the contracting officer may waive the requirements set forth at 252.208-7005, Required Sources for Forging and Welded Shipboard Anchor Chain Items. Such waiver may be granted on a case-by-case basis when adequate domestic supplies of listed forging items are not available to meet DoD needs on a timely basis. Also, these waivers will only be granted to the extent and for the period of time necessary to permit the contractor to acquire and use listed forging items of domestic manufacture.

Subpart 208.79—Antifriction Bearings

Source: 54 FR 14654, Apr. 12, 1989, unless otherwise noted.

208.7900 Definitions.

As used in this subpart:

Bearing components means bearing elements, retainers, inner races, or outer races.

Bearings means antifriction bearings.

Commercial product is as defined in FAR 11.001, except that for purposes of this subpart it does not include (1) items designed or developed under a government contract, or (2) bearings or bearing components.

Custom/speciality Bearings means those bearings having tolerances equivalent to super precision-bearings or greater, and those bearings which contain components or have assembly characteristics that meet or exceed ABEC/RBEC 5.

Domestic manufacture means wholly manufactured in the United States or Canada. When a bearing assembly is involved, all components of the assembly must be wholly manufactured in the United States or Canada. Unless otherwise specified, raw materials, such as preformed bar, tube or rod stock and lubricants, need not be domestically mined or produced.

Miniature and instrument ball Bearings means rolling element ball bearings having a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance, or quality characteristics (see DFARS 208.73).

Super-precision Bearings means bearings having a precision classification of ABEC/RBEC 5 or higher.

[54 FR 14654, Apr. 12, 1989; 54 FR 16438-T, Apr. 24, 1989, as amended at 54 FR 20592, May 12, 1989]

208.7901 Applicability.

This subpart does not apply to:

(a) Commercial products as defined in this subpart;

(b) Miniature and instrument bearings restricted by subpart 208.73;

(c) Bearings covered by the following Military Specifications, for contracts entered into prior to December 31, 1989.

MIL B 6039 Bearing, double row, ball, sealed rod end, antifriction, self-aligning

MIL B 7949 Bearing, ball, airframe, antifriction

MIL B 8952 Bearing, roller, rod end, antifriction self-aligning

[54 FR 14654, Apr. 12, 1989; 54 FR 20592, May 12, 1989]

208.7902 Policy.

The United States bearing industry has eroded during the last decade. Failure to halt this erosion will result in an industry unable to meet industrial surge and mobilization requirements for bearings. In view of the national security significance of bearings, the DoD has determined that, except as provided in 208.7901, all bearings, bearing components, or bearings contained in items, whether procured directly or installed in defense end items and subassemblies shall be of domestic manufacture. This restriction shall remain in effect for contracts awarded through September 30, 1991. The restriction may be extended an additional two years if conditions warrant.

208.7903 Waiver procedures for contracts of 12 months or less.

(a) The Head of the Contracting Activity, without delegation, may waive the domestic bearings requirements of this subpart by making a determination that there is no domestic bearing manufacturer that meets the requirement or that it is not in the best interest of the United States to qualify a domestic bearing to replace a qualified nondomestic bearing. This determination must be based on a finding that the qualification of a domestically manufactured bearing would cause unreasonable costs or delays.

(b) The finding of unreasonableness should be made in consideration of the DoD policy to assist the United States industrial mobilization base by awarding more contracts to domestic bearing manufacturers, thereby increasing their capability to reinvest and to become more competitive.

208.7904 Waiver procedures for contracts exceeding 12 months.

The procedures described in 208.7903 shall apply also to contracts exceeding 12 months; however, before a waiver is granted for a multiyear contract or contract that may exceed 12 months, the contracting officer shall require offerors to submit a written plan for transitioning from the use of nondomestic to domestically manufactured bearings. The plan shall be reviewed to determine whether a domestically manufactured bearing can be qualified at a reasonable cost, and used in lieu of the foreign bearing during the course of the contract period. If acceptable, the plan shall be incorporated in the contract and shall:

(a) Identify the bearings that are not domestically manufactured, the application, and source of supply;

(b) Describe the transition, including cost and timetable, for providing a domestically manufactured bearing. The timetable for completing the transition should normally not exceed 24 months from the date the waiver is granted.

208.7905 Solicitation provision and contract clause.

(a) Except as provided in (b) below the clause set forth at 252.208-7006, Required Sources for Antifriction Bearings, shall be inserted in all solicitations and contracts.

(b) The requirements of (a) above shall not apply when:

(1) The contracting officer knows that the item being procured does not contain bearings;

(2) Purchasing foreign manufactured bearings, bearing components, or foreign manufactured products containing bearings overseas for use overseas;

(3) Purchasing bearings, bearing components, or items containing bearings for use in a cooperative or co-production project under an international agreement;

(4) Using small purchase procedures, other than in purchases of bearings as the end item.

PART 209—CONTRACTOR QUALIFICATIONS

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46129, Dec. 23, 1986, unless otherwise noted.

Subpart 209.1—Responsible Prospective Contractors

209.103 Policy.

(S-70) *Acquisition from Concerns in Qualifying Countries.*

(1) Awards to concerns in qualifying countries are subject to this subpart and other sections of this Supplement concerning NATO participating country sources.

(2) A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of FAR 9.104-4 as the basis for his determination under FAR 9.103.

(S-71) *Acquisitions from Contractors and Subcontractors Subject to On-Site Inspection Under the Intermediate-Range Nuclear Forces (INF) Treaty.* It is DoD policy that firms subject to on-site inspection under the INF Treaty be treated fairly when competing for defense contract or subcontract awards. To ensure fair treatment, a potential contractor subject to on-site inspection shall not be denied consideration for a contract or subcontract award solely or in part because of the acutal or potential presence of Soviet inspectors at the contractor's facility unless this decision is first reviewed by the Senior Acquisition Executive of the procuring Department or Agency and approved by the Under Secretary of Defense for Acquisition. Such denial shall only be made if determined necessary for reasons of national security. A decision to deny consideration for award shall be made as early as possible in the acquisition process, consistent, however, with obtaining full information on which to base a decision, including comment from the potential contractor or subcontractor on the security issues involved. A decision not to consider a firm for award of a contract or subcontract shall be communicated in writing to that firm. Contracting officers shall insert the contract clause at 252.209-7001 in all solicitations and contracts in excess of the dollar limitation identified in FAR 13.000, except those for commercial or commercial-type products (see FAR 11.001).

[51 FR 46129, Dec. 23, 1986, as amended at 53 FR 20632, June 6, 1988; 54 FR 53616, Dec. 29, 1989]

209.104 Standards.

209.104-1 General standards.

(e) Have the necessary safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors.

[54 FR 30740, July 24, 1989]

209.104-3 Application of standards.

(c) *Satisfactory performance record.*

(c)(2) Quality is a significant consideration in determining satisfactory performance. Quality defects of a critical or repetitive nature without adequate and timely corrective action, including repair or replacement of items, shall also be presumptive of inability to meet this requirement. DoD components shall assure that contracts are not awarded to contractors with a history of providing supplies or services of an unsatisfactory quality.

(S-70) In cases where the firm proposed by CCC is so accepted, preaward survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, the contracting officer shall request from CCC and any other sources whatever additional information or plant surveys the contracting officer may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the preaward survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

209.105 Procedures.

209.105-70 Current information.

(a) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Department shall, at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(b) For preaward survey assistance for contracts requiring performance of Contract Administration Services (CAS) on military installations, see 242.270.

51 FR 46129, Dec. 23, 1986, as amended at 53 FR 38193, Sept. 29, 1988]

209.106 Preaward surveys.

209.106-2 Requests for preaward surveys.

(S-70) Procedure for requesting preaward survey.

(1) Preaward surveys will be accomplished by the cognizant Contract Administration Office as listed in DoD Directory of Contract Administration Services Components, DoD 4105.59-H. The contracting officer shall request a preaward survey on Standard Form (SF) 1403, Preaward Survey of Prospective Contractor (General), indicating in Section III thereof, the scope of the survey desired. An original and 3 copies of the SF 1403 requesting a preaward survey will be provided along with a copy of the solicitation and such drawings and specifications as deemed necessary by the purchasing office.

(2) Factors requiring emphasis not enumerated in Section III should be listed by the contracting officer under item "G" of that Section and explained in block 23, Remarks.

(3) The "Walsh-Healey Public Contracts Act" block of Section I is for information purposes only. If information is needed on the offeror's eligibility under the Walsh-Healey Act, it must be specifically requested in block "G" of Section III and explained in block 23, Remarks.

(4) A survey may be requested by telegraphic communication containing the data required by Sections I, II, and III of the form. A survey may be requested by telephone but shall be immediately confirmed by transmittal of completed SF 1403.

(5) The SF 1403 lists five major factors and seven other factors to be evaluated. One or more of these factors can be checked depending on the contracting officer's concerns regarding the offeror's responsibility. Following is a brief explanation of the factors:

SECTION III, BLOCK 19, MAJOR FACTORS

Factors A—Technical Capability—An assessment of the prospective contractor's key management personnel to determine if they have the basic technical knowledge, experience, and understanding of the requirements necessary to produce the required product or provide the required service.

Factor B—Production Capability—An evaluation of the prospective contractor's ability to plan, control, and integrate manpower, facilities, and other resources necessary for successful contract completion. This includes (1) an assessment of the prospective contractor's possession of, or the ability to acquire, the necessary facilities, material, equipment and labor; (2) a determination that the prospective contractor's system provides for timely placement of orders and for vendor follow-up and control.

Factor C—Quality Assurance Capability—An assessment of the prospective contractor's capability to comply with the quality assurance requirements of the proposed contract. It may involve an evaluation of the prospective contractor's quality assurance system, personnel, facilities and equipment.

Factor D—Financial Capability—A determination that the prospective contractor has adequate financial resources, or access to them, to acquire needed facilities, equipment, materials, etc.

Factor E—Accounting System—An assessment by the Defense Contract Audit Agency (DCAA) of the adequacy of the prospective contractor's accounting system. Normally, an accounting system review will be requested when conditions such as progress payment, or a cost or incentive type contract is contemplated.

SECTION III, BLOCK 20, OTHER FACTORS

Factor A—Government Property Control—An assessment of the prospective contractor's capability to manage and control Government property.

Factor B—Transportation—An assessment of the prospective contractor's capability to comply with the laws and regulations applicable to the movement of Government material, or overweight, oversized, hazardous cargo, etc.

Factor C—Packaging—An assessment of the prospective contractor's ability to meet all contractual packaging requirements including preservation, unit pack, packing, marking and unitizing for shipment.

Factor D—Security Clearance—A determination that the prospective contractor's facility security clearance is adequate and current. (When checked, this factor will be referred to the Defense Investigation Service (DIS) by the surveying activity.)

Factor E—Plant Safety—An assessment of the prospective contractor's ability to comply with safety requirements specified in the solicitation.

Factor F—Environmental/Energy Considerations—An evaluation of the prospective contractor's ability to meet specific environmental/ energy requirements contained in the solicitation.

Factor G—Other—This factor is checked when an assessment of other than Major Factors A-E and Other Factors A-F is desired. When Factor G is checked, the desired information will be explained in the Remarks sections. An example of an item that may be included under this factor is Walsh-Healey eligibility.

(6) Factors checked on the SF 1403 will be limited to those essential to the contracting officer's determination of responsibility.

(7) Block 10 of the SF 1403 will show the date preaward survey results are required by the purchasing office. This date will be determined by the contracting officer after due consideration of the urgency of the acquisition, and the scope and complexity of the preaward survey. In particular, consideration must be given to the more time-consuming aspects of a preaward survey such as secondary survey requirements, accounting system review, financial capability analysis, and purchasing office participation in the survey. Routine preaward surveys, with established DoD contractors, are normally accomplished by the Contract Administration Office within 7 workdays after receipt of the request. Preaward survey requests for particularly complex items, or those involving aspects as mentioned above, will usually require more time and should be allowed for by the contracting officer.

209.106-70 Steps for survey performance.

The three steps in performing a preaward survey are the preliminary analysis, the development and evaluation of information, and the preparation and review of the survey report.

(a) *Preliminary analysis.* The request (SF 1403, Sections I, II, and III) shall be reviewed to establish basic administrative information and the factors to be evaluated. The solicitation shall then be reviewed to ascertain those general and special requirements which have a significant bearing on determining contractor responsibility. Examples are the nature of the product, applicable specifications, delivery schedule, documentation requirements, property control requirements, and financing aspects.

(b) *Development of information*—(1) *Review of available data.* The information already available in the contract administration office pertaining to the prospective contractor and his past performance shall be reviewed. Prior preaward survey reports shall be examined and considered in support of preaward survey recommendations. If the prospective contractor has current or contemplated Government contracts, the files should be checked for information regarding similarity of product, current status of contracts, quality control experience, and financial status.

(2) *Development of additional data.* (i) When appropriate, the contract administration office shall supplement the data on hand with any additional information required from other Government sources and from commercial

sources, such as banks, business associates, and credit rating and reporting agencies.

(ii) When a prospective contractor proposes to acquire additional resources essential to performance of the proposed contract, the CAO shall as a minimum obtain and evaluate:

(A) An itemized list of the required resources;

(B) A planned method of acquisition; and

(C) A schedule for acquisition of resources. Failure to meet commitments on previous contracts shall be documented in the current preaward survey report and considered in the final recommendation.

(c) *On-site surveys*—(1) *Interview, evaluation, and review.*

(i) *General.* An on-site survey will consist of an interview with representatives of the prospective contractor and, normally, an evaluation of his resources and procedures.

(ii) *Interview with management.* Management officials of the appropriate level authorized to represent the prospective contractor should be interviewed. The prospective contractor's background shall be reviewed and as much history recorded as necessary to reflect the soundness and reputation of the firm's operation.

(A) The organizational structure of the facility is the basis for management's control and must be reviewed. Assignment of definite tasks and responsibilities should be checked.

(B) Lack of understanding or misinterpretation of the solicitation often results in delinquent contracts and leads to default actions. Therefore, the solicitation shall be discussed with prospective contractors to assure that they understand its requirements, including its technical aspects such as drawings, specifications, prototype, technical data and provisioning technical documentation (including automated data processing requirements when appropriate), testing, packaging, and Government's right to use technical data in accordance with the terms of the solicitation. Any misinterpretations of the requirements of the solicitation which could adversely affect performance, or refusal by the prospective contractor to furnish required data, should be brought to the immediate attention of the official approving the survey by the team coordinator. The official approving the survey shall, in turn, promptly advise the purchasing office.

(iii) *Evaluation of resources and review of procedures.* The resources which the prospective contractor intends to utilize shall be inspected, analyzed, and compared with his overall plans for performing. His procedures relating to performance of the proposed contract shall be reviewed for adequacy.

(iv) *Specific factors to be considered.* In the course of developing information, those factors described in 209.106-70(c)(2) through 209.106-70(c)(4) below and all others needed to provide the report and recommendations in the detail and to the extent required by the purchasing office shall be considered.

(2) *Production*—(i) *General.* The production portion of the on-site survey consists of an evaluation of the prospective contractor's ability to manufacture the product(s) in accordance with the specifications and delivery schedule of the proposed contract. To achieve the objectives of this portion of the on-site survey, the production plan shall be reviewed, production resources ascertained, and the plan related to such resources.

(ii) *Obtaining the production plan.* The prospective contractor's production plan for meeting the delivery schedule specified in the proposed contract shall be ascertained. The principal milestones within the production plan shall be established, along with target dates for achievement. These target dates must support the delivery schedule of the proposed contract. The controls which will be utilized in order to gear and hold the manufacturing effort to the target dates for the principal milestones shall be analyzed for suitability.

(iii) *Ascertaining production resources.* The information necessary to prepare SF 1405 shall be obtained by discussion with appropriate management personnel of the prospective contractor. This information shall be verified, when necessary, by physical inspection of the manufacturing plant and evaluated in terms of suitability to manufacture the required item(s).

(iv) *Relating production plans to production resources.* When necessary, representatives of the prospective contractor shall be requested to advise how the production resources will be allocated and utilized in order to achieve the target dates for the principal milestones. This shall include both in-house and subcontractor production resources. Pertinent to this is an analysis of projects and contracts which will compete for utilization of those resources within the same time frame as that specified by the prospective contractor's production plan. The information developed as a result of equating the production plan and production resources of the prospective contractor should enable the contract administration office to:

(A) Conclude whether the resources which the prospective contractor is planning to use are suitable for the job;

(B) Determine whether the prospective contractor will be capable of properly controlling, maintaining, protecting and using Government property;

(C) Determine whether the planning and scheduling of effort will result in timely accomplishment of the principal milestones;

(D) Conclude whether achievement of the principal milestones will result in timely delivery.

(3) *Quality assurance (SF 1406).* (i) The standing of the quality assurance organization in the prospective contractor's overall organization must be evaluated. An inspection or quality control function which reports to some other organizational segment (such as Production) instead of top management may be undesirable. The experience of the company inspection or quality control personnel with the same or similar items shall be evaluated.

(ii) To evaluate the prospective contractor's ability to comply with quality control or inspection requirements, the following areas shall be reviewed:

(A) Methods currently utilized to control product quality as reflected by a documented or verifiable inspection system or quality program plan;

(B) Personnel on hand and available (report both trained and untrained);

(C) Inspection and test equipment on hand and available;

(D) Quality, identification, and storage of materials;

(E) Physical arrangement of plant;

(F) Tool and gauge control; and

(G) Test and inspection records.

(4) *Financial (SF 1407).*

(i) *General.* The normal procedure for determining a prospective contractor's financial capability shall be initial presurvey planning, followed by verification of financial data as required. The extent of the review and analysis of financial matters shall be governed by the nature of the proposed contract. In certain instances, a sound decision may be possible after a relatively simple review of a company's financial position and production commitments. Under other circumstances, a more comprehensive review and analysis will be required. The approach to financial analysis shall be consistent with the basic policies and regulations outlines in FAR 32.172, 32.173 and 32.174.

(ii) *Procedure.* Aspects to be considered in determining the prospective contractor's financial capability include the following:

(A) The latest balance sheet and profit and loss statement shall be reviewed. The following are indicative of the soundness of the prospective contractor's financial structure:

(*1*) Rates and ratios;

(*2*) Working capital as represented by current assets over current liabilities; and

(*3*) Financial trends such as net worth, sales and profit.

(B) The method of financing the contract shall be evaluated. Where sources of outside financing, other than the Government, are indicated, their availability should be verified.

(C) When financial aid from the Government is to be obtained, the necessity should be verified. Review shall be made concerning the applicability of such financing as progress payments or guaranteed loans.

(d) *Evaluating data and preparing the report*—(1) *Findings of team members.* When the required information has been gathered, each individual participant shall analyze it and evaluate the prospective contractor's capability to perform with respect to the functional element(s) evaluated. Each participant shall then provide his findings to the official approving the survey. When a negative reply is recorded, or when doubt exists, an explanation must substantiate such action. If a detailed analysis is needed or additional significant information is pertinent, a narrative report shall be supplied.

(2) *Evaluation and recommendation.* Based on all the information received from the team members, the official approving the survey shall thoroughly review and evaluate the findings and recommendations, and forward the report direct to the purchasing office. When advance reports are made by telegraphic communication or telephone, they shall be confirmed by mail without delay. The official approving the survey shall follow up on any requirements for the submission of supplemental reports.

209.106-71 Audit responsibilities for preaward surveys and reviews.

Preaward surveys of potential contractors' competence to perform proposed contracts shall be managed and conducted by the contract administration office. When information is required on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, such information shall always be obtained by the ACO from the auditor. The contract administration office shall be responsible for advising the contracting officer on matters concerning the contractor's financial competence or credit needs.

209.170 Acquisition from Firms Owned or Controlled by Foreign Governments that Support Terrorism.

209.170-1 Definition.

Significant interest as used in this section means—

(a) Ownership of or beneficial interest in five percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent or more of any class of the firm's securities in "nominee shares", "street names", or some other method of holding securities that does not disclose the beneficial owner;

(b) Holding a management position in the firm such as a director or officer;

(c) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(d) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(e) Holding 50 percent or more of the indebtedness of a firm.

[53 FR 38193, Sept. 29, 1988]

209.170-2 Disclosure.

10 U.S.C. 2327 requires that, for contracts expected to equal or exceed $100,000, Department of Defense agencies obtain from any firm, or subsidiary of a firm, submitting a bid or proposal, a disclosure in that bid or proposal of any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) which is owned or controlled, directly or indirectly, by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that has been determined by the Secretary of State under 50 U.S.C. 2405(j)(1)(A) to have repeatedly provided support for acts of international terrorism.

[53 FR 38194, Sept. 29, 1988]

209.170-3 Prohibition.

10 U.S.C. 2327(b) prohibits a Defense agency from awarding a contract of $100,000 or more to a firm or a subsidiary of a firm in which a foreign government owns or controls a significant interest, directly or indirectly, in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary), if such foreign government is the government of a country that has been determined by the Secretary of State under U.S.C. 2405(j)(1)(A) to have repeatedly provided support for acts of international terrorism. The Secretary of Defense may waive this prohibition in accordance with 10 U.S.C. 2327(c).

[53 FR 38194, Sept. 29, 1988]

209.170-4 Solicitation provision.

The contracting officer shall insert the provision at 252.209-7000, Certification or Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism, in solicitations when the contract is expected to equal or exceed $100,000.

[53 FR 38194, Sept. 29, 1988]

Subpart 209.2—Qualifications Requirements

209.202 Policy.

(a)(1) The inclusion of qualification requirements in specifications for products which are to be included on a Qualified Products List (QPL) must be approved by the applicable authority or a designee listed below:

In the Army, Headquarters, U.S. Army Materiel Command, (AMCPD-SE);

In the Navy, Contracts and Business Management, OASN (S&L);

In the Air Force, Departmental Standardization Office (HQ SAF/AQXA);

In the Defense Logistics Agency, The Executive Director, Contracting;

In the National Security Agency, The Director of Procurement;

In the Defense Communications Agency, The Director;

In the Defense Nuclear Agency, The Director, Acquisition Management; and

In the Defense Mapping Agency, The Director of Acquisition.

51 FR 46129, Dec. 23, 1986, as amended at 53 FR 38174, 38246, Sept. 29, 1988]

Subpart 209.3—First Article Testing and Approval

209.302 General.

The Government may require that first articles be manufactured using the same facilities and the same production processes, methods and materials, with which the item is to be produced for the contract (see 209.308 below).

209.305 Risk.

This authorization may be given to a contractor only after approval at a level higher than the contracting officer (see FAR 9.308).

[51 FR 46129, Dec. 23, 1986, as amended at 54 FR 30740, July 24, 1989]

209.308 Contract clauses.

Alternate I of the clauses at FAR 52.209-3 or 52.209-4, as appropriate, may be included by the Contracting Officer whenever:

(a) The form, fit, or function of the product would be adversely affected by contractor changes in the production facilities, processes, methods, or materials subsequent to first article approval; and

(b) The Government has relied upon first article testing in the absence of complete design specifications to supplement a performance specification; or

(c) It is essential to have an approved first article to serve as a manufacturing standard.

Subpart 209.4—Debarment, Suspension, and Ineligibility

209.403 Definitions.

Authorized Representative means an official who has been designated by and authorized to act on behalf of the Secretary concerned for the purposes of this subpart (see 209.470) including, but not limited to, acting as a debarring or suspending official.

209.405 Effect of listing.

(a)(1) Prior to initiating a pre-award survey or any of the contract actions set forth in FAR 9.405, the consolidated list shall be reviewed. Bids received from any listed contractor in response to an Invitation for Bids shall be opened, entered on the Abstract of Bids, and rejected unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception. Proposals, quotations or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, and discussions shall not be conducted with such offeror, unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception. Notwithstanding the above, if the debarment is based on a felony criminal conviction, exceptions from this section based on compelling reasons shall not be effective without the prior written concurrence of the Secretary concerned or in the case of the Defense Agencies the Under Secretary of Defense for Research and Engineering.

(2) When a Department makes an exception, a notice describing the exception shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include:

(i) The property or services to be acquired are available only from the listed contractor;

(ii) The urgency of the requirement dictates that the Department deal with the contractor;

(iii) The contractor and the Department have entered an agreement covering the same events which resulted in the listing and the agreement includes a decision by the Department not to debar or suspend the contractor; and

(iv) For such other reasons related to the national defense which require continued business dealings with the listed contractor.

(c) Debarred or suspended contractors are also excluded from conducting business with the Department of Defense as agents or representatives of other contractors.

[51 FR 46129, Dec. 23, 1986, as amended at 53 FR 38246, Sept. 29, 1988]

209.405-2 Restrictions on subcontracting.

If a debarment is based on a felony criminal conviction, Government consent or approval of a subcontract with a debarred contractor shall not be given unless the Secretary concerned or, in the case of the Defense Agencies the Assistant Secretary of Defense (Acquisition and Logistics), concurs in writing with such consent or approval.

209.406 Debarment.

209.406-1 General.

(d) If the cause for debarment as listed in FAR 9.406-2 is based on a felony conviction, the debarment period should be commensurate with the seriousness of the crime. The period of debarment should afford adequate time for the contractor to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned. Mitigating factors should be considered in making the debarment decision. However, for any decision not to debar or to debar for one year or less, the mitigating factors must demonstrate clearly to the debarring official's complete satisfaction, that the contractor has eliminated such circumstances and has implemented or agrees to implement remedial measures. The debarring official should consider the following mitigating factors, among others, in making a debarment decision:

(1) Whether the contractor had effective standards of conduct and internal control systems, as outlined in section 203.7000, in place at the time of the activity on which the felony conviction was based or has adopted such procedures prior to any government investigation leading to the suspension or debarment proceedings;

(2) Whether the contractor made timely disclosure to the appropriate government agency;

(3) Whether the contractor cooperated fully with government agencies during the investigation and any court or administrative action;

(4) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity;

(5) Whether the contractor has made or has agreed to make full restitution, including any investigative or administrative costs incurred by the government;

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity upon which the conviction

was based, including dismissal when such action is warranted based on a consideration of all the available facts;

(7) Whether the contractor has implemented or agreed to implement remedial measures; and

(8) Whether the contractor has agreed to institute new or revised review and control procedures and ethics training programs.

(e) Whenever, following a felony conviction, the debarring official determines that debarment is not necessary to protect the government's interests, the debarring official shall require the contractor to enter into a written agreement, which includes (i) a requirement for the contractor to establish (if the contractor has not already established such standards for conduct and internal control systems) and/or maintain effective standards of conduct and internal control systems as outlined in 203.7000, and (ii) other requirements as the debarring official deems to be appropriate.

(S-70) If no suspension is in effect under FAR 9.407 at the time debarment is proposed by a Department, bids or proposals shall not be solicited from, contracts shall not be awarded to, existing contracts shall not be renewed or otherwise extended with, and subcontracts shall not be consented to or approved for the contractor by any DoD component pending a debarment decision unless the Secretary concerned or authorized representative states in writing the compelling reason to do so.

[51 FR 46129, Dec. 23, 1986, as amended at 52 FR 34387, Sept. 11, 1987]

209.406-3 Procedures.

(c)(7) For purposes of this FAR subsection, "agency" includes all DoD components. The Secretary concerned or his authorized representative may, however, make an exception in accordance with 209.406-1(S-70).

209.406-4 Period of debarment.

(a) If a decision is based upon a felony conviction, the period shall be commensurate with the seriousness of the crime and will generally be for more than one year but not more than three years. A decision by the debarring official not to debar or to debar for one year or less than one year and the agreement required by 209.406-1(e) must be approved in writing by the Secretary concerned or, in the case of the defense agencies, by the Assistant Secretary of Defense (Production & Logistics), except where the debarring official determines that all of the enumerated mitigating factors set out in 209.406-1(d) are applicable and have been accomplished.

(b) If suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

(c) If the debarment is based on a felony criminal conviction, the period or extent of debarment may be only reduced:

(1) If the conviction upon which the debarment was based is reversed; or

(2) If the contractor demonstrates to the debarring official's complete satisfaction that the steps taken to eliminate the circumstances within the contractor's organization that encouraged the belief that the acts or omissions on which the organization's conviction was based would escape accountability or be condoned have been effective.

[51 FR 46129, Dec. 23, 1986, as amended at 52 FR 34387, Sept. 11, 1987]

209.470 Authorized representatives.

For the purpose of FAR Subpart 9.4 the authorized representatives of the Secretaries are:

(a) In the Army, the Assistant Judge Advocate General for Military Law;

(b) In the Navy, the Assistant Secretary of the Navy (Shipbuilding and Logistics);

(c) In the Air Force, the Deputy Assistant Secretary (Aquisition Management and Policy);

(d) In the Defense Logistics Agency, the Special Assistant for Contracting Integrity;

(e) In the National Security Agency, The Director;

(f) In the Defense Communications Agency, the General Counsel;

(g) In the Defense Nuclear Agency, the Director; and

(h) In the Defense Mapping Agency, the General Counsel.

[51 FR 46129, Dec. 23, 1986, as amended at 53 FR 38200, Sept. 29, 1988]

209.471 Interchange of information.

Debarment or suspension of a contractor by one Department can have an adverse impact on the missions of other Departments with which the contractor does business. Accordingly, if it appears that there is the potential for such an adverse impact, the cognizant debarring or suspending official should solicit the comments of those Departments that he believes could be affected before taking action. A Department that believes it could be affected by the proposed action should comment directly to the cognizant debarring or suspending official. If several Departments independently are contemplating a debarment or suspension action against the same contractor, consideration should be given to designating one Department as the lead agency for making the decision.

209.472 Reporting.

209.472-1 Situations where reports are required.

A report incorporating the information required by 209.472-2 shall be prepared by the contracting officer when:

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 and 9.407-2;

(b) A report is required by 203.000;

(c) A report is required by FAR 49.106 (termination settlements);

(d) Buy American Act violations are suspected (see FAR 25.204); or

(e) A contractor is suspected of attempting to evade the prohibitions or debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

[51 FR 46129, Dec. 23, 1986, as amended at 53 FR 38237, Sept. 29, 1988]

209.472-2 Contents of reports.

Each report prepared pursuant to this subsection shall contain the name and telephone number of the individual assigned to the case as the point of contact for the activity making the report, and shall include substantially the following information, where available:

(a) Name and address of the contractor;

(b) Names of the principal officers, partners, owners, or managers;

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(d) Description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(e) The status of vouchers;

(f) Whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(g) Whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;

(h) A complete summary of all pertinent evidence;

(i) A recommendation as to the continuation of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(k) The comments and recommendations of the contracting officer and of each successive echelon as to (1) whether the contractor should be suspended or debarred, (2) whether any limitations should be applied to such action, and (3) the period of any debarment; and,

(l) As an enclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation, such as affidavits, copies of investigative reports and certified copies of indictments and judgments.

209.472-3 Addresses and copies of reports.

Reports shall be submitted in three complete copies, including enclosures, to the authorized representatives of the Secretaries concerned, unless otherwise provided by Departmental procedures. Additional copies without enclosures may be required by Departmental procedures for other addresses.

209.473 Acquisition outside United States.

209.473-1 General.

The foregoing provisions of this subpart shall be applied by overseas commanders to acquisitions outside the United States and its possessions, whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries concerned.

209.473-2 Responsibilities and area coverage.

The Commander in Chief, United States European Command (CINCEUR), the Commander in Chief, Pacific (CINCPAC) and the Commander in Chief, Southern Command (CINCSOUTH), or the Commanders of a component command which each of these unified commanders may designate, shall establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas, including all of Europe, North Africa, and the Middle East. The CINCPAC consolidated list will include names in the Far East and Pacific Ocean areas, excluding the United States and its possessions. The CINCSOUTH consolidated list will include names in Central and South America, excluding possessions. All other overseas commanders shall utilize and contribute to such lists as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

209.473-3 Information contained on overseas lists.

The list shall show as a minimum the following Information:

(a) Names and addresses of those contractors to whom contracts shall not be awarded and from whom bids or proposals shall not be solicited (Names will be set forth alphabetically with appropriate cross reference where more than one name is involved in a single action or where a parent contractor in one country is known to control subsidiaries, branches, or agencies in the same or other countries.);

(b) Basis or authority for each action;

(c) Extent of restrictions imposed;

(d) Termination date for each debarred listing; and

(e) Originating activity, component, or agency.

209.473-4 Maintenance and distribution of lists.

The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the lists shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCSOUTH shall exchange lists directly. Copies shall also be furnished the Deputy Assistant Secretary of Defense (Procurement), OASD(A&L), the Assistant Secretary of Defense (International Security Affairs), and the authorized representative of the Secretaries.

209.473-5 Basis of addition of contractors to lists.

In addition to the names of offshore contractors which may be included on the lists as falling into the categories outlined in FAR 9.405, the names of contractors abroad shall be included on the list in the following additional categories:

(a) Those who are "designated nationals" under the Foreign Assets Control Regulations;

(b) Those found by the Assistant Secretary of Defense (International Security Affairs) or authorized representative to have engaged in improper East-West trade activity;

(c) Those found by the Assistant Secretary of Defense (International Security Affairs) or authorized representative to be ineligible because they do not meet the political or security criteria;

(d) Those found by the United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the contractors are located) to be ineligible because they do not meet the labor-political criteria; and,

(e) Those who for other causes of a serious and compelling nature are so designated by the unified commander.

209.473-6 Treatment to be accorded contractors in debarred or ineligible status.

The provisions of FAR 9.405 shall be complied with, if applicable. In addition, contracts shall not be awarded to, nor shall bids or proposals be solicited from or furnished to contractors abroad which come within the categories in 209.473-5. With respect to 209.473-5(a), an exception may be made only by the Secretary of the Treasury. With respect to 209.473-5 (b), (c), and (d), an exception may be made by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative.

209.473-7 Causes and conditions for which unified commanders may place names on the consolidated list.

CINCEUR, CINCPAC, and CINCSOUTH, or their designated component commanders are authorized to place on the list names of contractors doing business within the areas for which they are responsible, for any of the causes and under the conditions set forth in 209.473-5 and 209.473-6. Overseas commanders or unified commanders overseas other than CINCEUR, CINCPAC, and CINCSOUTH are similarly authorized to place on the list the names of contractors in their command areas and shall promptly notify CINCEUR, CINCPAC, or CINCSOUTH as appropriate, of such action, furnishing the information required by 209.473-3. CINCEUR, CINCPAC, or CINCSOUTH shall add the names to his consolidated list. The listing shall operate to deny contracts and subcontracts (when Government approval is required) to such contractors throughout the Department of Defense. Unified commanders shall be notified of the action based on causes and under conditions set forth in 209.473-5 and 209.473-6 through the "Economic Defense List", transmitted by the Department of Commerce through State Department channels, which contains the names of contractors affected or by direct communication from the Office of the Assistant Secretary of Defense (International Security Affairs).

209.473-8 Liaison with United States diplomatic missions.

The Chief of the United States Diplomatic Mission, or such attache or other officer as the Chief of the United States Diplomatic Mission directs, in the country where the contractor concerned is located, shall be notified of actions contemplated under the foregoing paragraphs which may have important political significance. In cases of contemplated action against a branch or subsidiary in one or more countries, the Chief of the United States Diplomatic Mission in each country, including that in which the parent or principal is located, will be notified.

209.474 Use of lists.

(a) Due to the length of the lists, the numerous revisions, and the distances involved, as well as the infrequent contracting by offices with suppliers outside their respective areas, the United States, CINCEUR, CINCPAC, and CINCSOUTH consolidated lists shall not be distributed to contracting officers outside the area covered by the respective lists. However, no contracts shall be awarded by contracting officers to suppliers without ascertaining that the names of the contractors involved do not appear on the consolidated list for the geographical area in which the contractor is located. All lists shall be held for reference in each of the Departments, and in offices designated by CINCEUR, CINCPAC, and CINCSOUTH, and shall be utilized in accordance with procedures established by them.

(b) When a contracting officer becomes aware that a prospective contractor proposes to furnish products of a concern that has been placed on an overseas list in accordance with 209.473-5 (a), (c), or (e), the matter shall be referred to the authorized representatives of the Secretaries concerned.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

210.001 Definitions.
210.002 Policy.
210.004 Selecting specifications or descriptions for use.
210.004-70 Requiring bills of materials.
210.008 Identification and availability of specifications.
210.011 Solicitation provisions and contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Source: 51 FR 46135, Dec. 23, 1986, unless otherwise noted.

210.001 Definitions.

Bill of Materials means a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind.

Nondevelopmental item means;

(a) Any item of supply that is available in the commercial marketplace;

(b) Any previously-developed item of supply that is in use by a department or agency of the United States, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(c) Any item of supply decribed in (a) or (b) above that requires only minor modification in order to meet the requirements of the contracting agency;or

(d) Any item of supply that is currently being produced that does not meet the requirements of (a), (b), or (c) above solely because the item is not yet in use or is not yet available in the commercial marketplace.

Systems, as used in this part, means a combination of elements that will function together to produce the capabilities required to fulfill a mission need.

System acquisition, as used in this part, means the design, development and production of new systems or the modification to existing systems that involve redesign of the system or subsystems.

[51 FR 46135, Dec. 23, 1986, as amended at 52 FR 34787, Sept. 15, 1987; 53 FR 35201, Sept. 12, 1988]

210.002 Policy.

(S-70) Pursuant to 10 U.S.C. 2325, it is the policy of the Department of Defense to fulfill requirements for items of supply through the acquisition of nondevelopmental items to the maximum practicable extent.

(c) All systems acquisition programs in the DoD are subject to acquisition streamlining policies and procedures as specified in DoD Directive 5000.43 and MIL-HDBK 248.

(1) Requirements that are not mandated by law or established DoD policy and that do not contribute to the operational effectiveness and suitability of the system, or effective management of its acquisition, operation, or support, shall be excluded.

(2) At the outset of development, system-level requirements shall be specified in terms of mission-performance, operational effectiveness, and operational suitability.

(3) During all acquisition phases, solicitations and contracts shall state management requirements in terms of results needed rather than "how-to-manage" procedures for achieving those results.

(4) The Government program manager shall have the authority and be held accountable for determining what technical requirements should be incorporated in the contract, subject to appropriate review by the established DoD and cognizant DoD component review procedures.

[52 FR 34787, Sept. 15, 1987, as amended at 53 FR 35201, Sept. 12, 1988]

210.004 Selecting specifications or descriptions for use.

(a)(3) Statements of work subject to acquisition streamlining shall state whether individual specifications, standards, and related documents are provided for guidance only or as firm requirements. Where contract documents are specified for guidance only, the contractor shall be required to evaluate the documents in relation to the performance requirements and to recommend a tailored application of the documents for any subsequent phase of the system acquisition program. While there may be some mandatory design or performance requirements applied to a single phase or through the acquisition cycle, the citation of specifications, standards, and related documents shall:

(i) Specify results desired, rather than "how-to-design" or "how-to-manage".

(ii) Be tailored to the unique circumstances of individual acquisition programs.

(iii) Be for guidance only, except as provided in paragraph (a)(3)(v) of this section, if included for acquisition programs prior to entering the full-scale development phase of their life cycle.

(iv) Be for mandatory compliance only for directly cited and first-tier referenced documents, except as provided in paragraph (a)(3)(v) of this section, for acquisition programs in the full-scale development phase of their life cycle. All other reference documents second-tier and below shall be for guidance only.

(v) Be for mandatory compliance including all levels of referenced documents, if they (A) define the product baseline for acquisition programs in the production phase; (B) call for nondevelopmental items, such as standard parts or off-the-shelf items; or (C) cover design constraints which have been directed and have been tailored to the maximum extent practicable.

(4) If the contractor is to evaluate and recommend tailored application for a subsequent phase, the contract statement of work must delineate the effort required.

(b)(3)(i) *General.* (A) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by FAR 10.004(b) and 210.006(a) and in accordance with 210.004(b)(3) (ii) and (iii). The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. When feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(B) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, when interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(*1*) Complete common generic identification of the item required;

(*2*) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and

(*3*) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if not well known).

(C) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the solicitation as being that of the particular named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

(ii) *Invitations for bids.* (A) Except as provided in (C) below, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:

Manufacturer's Name ______________
Brand ______________
No. ______________

(B) In addition, the clause at 252.210-7000, Brand Name or Equal, shall be included.

(C) When component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (B) above to such component parts would be impracticable, the requirements of (A) above shall not apply with respect to such component parts. In such cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

> The clause entitled "Brand Name or Equal" does not apply to the following component parts: (List the component parts as to which the clause does not apply.)

In the alternative, if the contracting officer determines that the clause in (B) above should apply to only certain such component parts, the requirements of (A) above shall apply to such component parts and a statement substantially as follows also shall be included:

> The clause entitled "Brand Name or Equal" applies to the following component parts: (List the component parts to which the clause applies.)

(D) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

(iii) *Bid evaluation and award.* (A) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award when the contracting officer determines in accordance with the terms of the clause at 252.210-7000 that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(B) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances when the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item, and the clause at 252.210-7000 was applicable to such component parts or accessories (see 210.004(b)(3)(ii)(C)).

(iv) *Procedure for negotiated acquisitions.* (A) The policies and procedures prescribed in 210.004(b)(3) (i) and (iii) for acquisitions by sealed bidding shall be generally applicable to negotiated acquisitions.

(B) The clause at 252.210-7000 may be adapted for use in negotiated acquisitions. If use of the clause is not practicable (as may be the case in an unusual and compelling urgency), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

[51 FR 46135, Dec. 23, 1986, as amended at 53 FR 35202, Sept. 12, 1988]

210.004-70 Requiring bills of materials.

A bill of materials with respect to all or part of the supplies to be furnished pursuant to a contract, shall be required only if the contracting officer shall determine that such bill is necessary to develop materials or components requirements for production and maintenance programs, for industrial mobilization purposes, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(a) The supplies or parts thereof to be covered by the bill of materials;

(b) The type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(c) The compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(d) The number and kind of copies of such bill to be furnished; and

(e) Delivery dates.

The contract shall also include the clause required by 210.011(72). When a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the bill of materials shall be furnished on DD Forms 346 and 347, if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the bill of materials in greater detail from a subcontractor than the contractor is to furnish under the terms of the above clause.

210.008 Identification and availability of specifications.

(g) (1) A Department of Defense Single Stock Point (DODSSP) has been established at the Naval Publications and Forms Center in Philadelphia for unclassified Federal, Military and other specifications and standards (including commercial) listed in the Department of Defense Index of Specifications and Standards (DODISS) and data item descriptions listed in the Department of Defense Acquisition Management Systems and Data Requirements Control List DoD 5010.12-L.

(2) Contracting activities may obtain copies of the DODISS and the AMSDL, as well as all unclassified specifications and standards (including commercial) listed in the DODISS, and data item descriptions listed in the AMSDL by sending DD Form 1425 to the DODSSP.

[51 FR 46135, Dec. 23, 1986, as amended at 53 FR 38174, Sept. 29, 1988]

210.011 Solicitation provisions and contract clauses.

(S-70) [Reserved]

(S-71) Specifications and standards not listed in the DODISS, and plans, drawings, and other pertinent documents (including new or revised Federal or Military specifications and standards not yet listed in DODISS) and data item descriptions not listed in DoD 5010.12-L, normally shall be furnished with the solicitation. When this is not feasible because of the bulk of the documents, the limited number of copies available, or for some other good reason, the contracting officer shall insert a provision substantially similar to the provision at 252.210-7002, Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD 5010.12-L, and Plans, Drawings, and Other Pertinent Documents or the provision at 252.210-7003, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents, as appropriate.

(S-72) The contracting officer shall insert the clause at 252.210-7004 as required by 210.004-70.

(S-73) The contracting officer shall insert the clause at 252.210-7005, Acquisition Streamlining, in solicitations and contracts for system acquisition programs (see 210.002).

51 FR 46135, Dec. 23, 1986, as amended at 53 FR 35202, Sept. 12, 1988; 53 FR 35202, Sept. 12, 1988; 53 FR 38174, Sept. 29, 1988; 55 FR 30157, July 24, 1990]

PART 211—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

211.002 Policy.

Contracting activities may use purchase descriptions which allow offerors to furnish commercial products and allow the Government to use commercial distribution systems whenever these products or distribution systems satisfy the Government's needs.

[51 FR 46136, Dec. 23, 1986, as amended at 54 FR 20592, May 12, 1989]

PART 212—CONTRACT DELIVERY OR PERFORMANCE

Subpart 212.1—Delivery or Performance Schedules

Sec.
212.102 Factors to consider in establishing schedules.
212.103 Supplies or services.
212.104 Contract clauses.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

Subpart 212.3—Priorities and Allocations

212.302 General.

Subpart 212.4—Variation in Quantity

212.401 Supply contracts.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46137, Dec. 23, 1986, unless otherwise noted.

Subpart 212.1—Delivery or Performance Schedules

212.102 Factors to consider in establishing schedules.

(b)(S-70) *Construction.* When economies to the Government would result by excluding certain specified periods of time from contractor performance in computing the completion date, the solicitation shall contain the clause in 252.212-7000, Exclusion of Periods in Computing Completion Schedules.

212.103 Supplies or services.

(S-70) Solicitations shall generally indicate either a desired term of performance or a completion date. In cases where development of a tangible item by a given date is urgent, solicitation shall indicate such urgency. Generally, solicitations to conduct research exploratory development work will specify a level of effort for a term of performance. However, solicitations calling for a specific item in the category of such exploratory or advanced development will specify a completion date. A contractor may propose an alternate term of performance or completion date without disqualification of his proposal.

212.104 Contract clauses.

(a)(2) The clauses at FAR 52.212-1 and FAR 52.212-2 can also be used in contracts for research, development facilities, time and material, and labor hours.

(a)(3) The clauses at FAR 52.212-1 and FAR 52.212-2 can also be used in contracts for research, development facilities, time and material, and labor hours.

Subpart 212.2—Liquidated Damages

212.204 Contract clauses.

(b) The contracting officer shall insert the clause at FAR 252.212-5 in all construction contracts in excess of $500,000 except cost-plus-fixed-fee contracts, or those where the contractor cannot control the pace of the work. Use of the liquidated damages clause is optional for contracts of $500,000 or less.

[51 FR 46137, Dec. 23, 1989, as amended at 54 FR 30740, July 24, 1989]

Subpart 212.3—Priorities and Allocations

212.302 General.

(S-70) *DoD Priorities and Allocations Manual.* Department of Defense implementation of all rules and regulations, published by the Office of Industrial Resource Administration (OIRA) of the Department of Commerce and for which the Department of Defense is delegated administrative responsibility is published in the Priorities and Allocations Manual promulgated by Department of Defense Instruction 4400.1. Authorized deviations to the priorities and allocations rules and regulations are published in the Manual.

Subpart 212.4—Variation in Quantity

212.401 Supply contracts.

(a) The permissible variation in the acquisition of small quantities of subsistence may be stated in the Schedule as follows:

(1) Standard pack items purchased on a package, carton, can or other than pound basis: maximum variation for 250 units or less—nearest full shipping container.

(2) Nonstandard pack items other than carcass meats not purchased on a package, carton, or can basis: maximum variation for 250 pounds or less—nearest piece or shipping container.

(3) Carcass meats: maximum variation for 500 pounds or less—nearest piece, quarter, side or carcass.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 213.1—General

Sec.
213.104 Procedures.
213.107 Solicitations and Evaluation of Quotations.

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of blanket purchase agreements.
213.203-1 General.
213.203-2 Clauses.
213.204 Purchase under blanket purchase agreements.

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

Subpart 213.4—Imprest Fund

213.402 General.
213.404 Conditions for use.
213.405 Procedures.

Subpart 213.5—Purchase Orders

213.502 Unpriced purchase orders.
213.503 Obtaining contractor acceptance and modifying purchase orders.
213.505 Purchase order and related forms.
213.505-2 Agency order forms in lieu of optional Forms 347 and 348.
213.505-3 Standard Form 44, Purchase Order—Invoice—Voucher.
213.505-70 Instructions for entries on DD Form 1155 and Optional Form 336.
213.505-71 Use of DD Form 1155 as a public voucher.
213.507 Clauses.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46137, Dec. 23, 1986, unless otherwise noted.

Subpart 213.1—General

213.104 Procedures.

(b) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 225.001) is not required unless determined to be in the best interests of the Government.

[51 FR 46137, Dec. 23, 1986, as amended at 53 FR 38179, Sept. 29, 1988]

213.107 Solicitations and Evaluation of Quotations.

(c) Installation or activity transportation facilities may be used for delivery from local suppliers to the contracting installation only after consideration of the following methods:

(1) Supplier delivery;

(2) Common carrier;

(3) Parcel post;

(4) Other mail classes.

[53 FR 38180, Sept. 29, 1988]

Subpart 213.2—Blanket Purchase Agreements

213.203 Establishment of blanket purchase agreements.

213.203-1 General.

(i) BPA's shall be prepared and issued on DD Form 1155, Order for Supplies or Services, except for BPA's issued by the Defense Personnel Support Center, which may be issued on its form "Order for Subsistence".

[52 FR 33414, Sept. 3, 1987]

213.203-2 Clauses.

(a) The clause requirements prescribed at 213.507 for purchase orders shall also apply to BPA's.

[52 FR 33414, Sept. 3, 1987]

213.204 Purchase under blanket purchase agreements.

(b) BPA calls for subsistence are unlimited as to dollar value, however such actions above the dollar threshold at FAR 13.000 must satisfy the requirements of FAR Part 6. BPA's may also be established with Federal Supply Schedule contractors and ADTS Schedule contractors consistent with the terms of the applicable contract schedule (see FAR 13.203-1(f)).

[53 FR 38218, Sept. 29, 1988, as amended at 54 FR 30741, July 24,1989]

Subpart 213.3—Fast Payment Procedure

213.302 Conditions for use.

(a) Individual orders do not exceed $25,000, except that for purchases of brand name commissary resale subsistence and commercial type medical supplies for direct shipment overseas, the procedure may be used without dollar limitation.

Subpart 213.4—Imprest Fund

213.402 General.

(a) *Authority.* Commanders of installations and of activities with contracting authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum, and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible. Additional guidance on imprest funds is contained in DoD Instruction 5100.71, Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds.

(b) *Imprest fund cashiers.* (1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, e.g., in "Central Receiving." Disbursing officers and individuals responsible for originating, approving and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) Name of individual and duty station;

(ii) Identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) Specific duties to be performed;

(iv) Effective date; and

(v) Amount and location of fund.

Two copies of the orders shall be furnished to cashiers, and one copy each to the disbursing office and the installation or activity contracting office.

(3) An alternate imprest fund cashier may be appointed to provide service during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned absences of the principal cashier, cash may be advanced by the principal to the alternate in any amount up to the limit of the fund. The principal shall obtain a signed cash receipt from the alternate. Upon resumption of duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers and residual cash. In the unforeseen absence of the principal cashier, funds may be advanced to the alternate in the normal manner by the disbursing officer. These funds shall be in addition to the amount currently advanced to the principal cashier under the established fund, but shall not exceed the amount of the fund. Upon return of the principal cashier, the alternate shall return paid receipts, subvouchers, and residual cash, to the disbursing officer.

[51 FR 46137, Dec. 23, 1986, as amended at 52 FR 33414, Sept. 3, 1987]

213.404 Conditions for use.

(a) Imprest funds may also be used for small purchases when:

(1) The supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination.

(2) The purchase does not require detailed technical specifications or technical inspection.

(3) The purchase is for overseas transactions up to $2,500 in support of contingencies declared by the Secretary of Defense.

(b) Imprest funds may also be used for payment of:

(1) Charges for local delivery, parcel post (including c.o.d. postal charges) and line haul or inter-city transportation charges for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery, provided the changes are determined to be reasonable and acceptance is in the best interest of the Government.

(2) C.O.D. charges for supplies ordered for payment from imprest funds.

(3) Civilian volunteers for participation in approved medical research projects.

(c) The conditions for use specified in (a) and (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (e.g., travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(1) Payments of salaries and wages;

(2) Advances, other than those authorized in 213.402;

(3) Cashing of checks or other negotiable instruments.

[51 FR 46137, Dec. 23, 1986, as amended at 52 FR 33414, Sept. 3, 1987; 54 FR 16116, Apr. 21, 1989]

213.405 Procedures.

(a) *Receipt of material.* (1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. A supplier's sales document, a receipted Standard Form 1165 (Receipt for Cash—Subvoucher), DD Form 1155 (Order for Supplies or Services/Request for Quotations), or DD Form 1348-1 (DoD Single Line Item Release/Receipt Document) may be used to record the receipt of purchases made from the imprest fund.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certification of receipt and acceptance of material shall be obtained on one of the documents as indicated in (1) above. Receipt for cash payment (see (e) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangement for pick up of material is not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(b) *Advance of funds.* Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165, or an equivalent receipt form. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should be accounted for daily, but under unusual circumstances, cash may be advanced for longer periods.

(c) *Certification of cash payment.* The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing the following information:

(1) Statement that cash payment was received in full.

(2) Amount paid.

(3) Date of payment.

(4) Signature and title of supplier or supplier's agent receiving the cash payment.

Alterations or corrections to documents tendered for payment shall be initialed by the person making the change. Changes in the amount paid shall be initialed by the individual receiving payment.

(d) *Responsibilities of imprest fund cashier.* (1) Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment, or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchases of $15 or less, the imprest fund cashier shall complete the cash receipt document and have the person receiving the fund sign this document. Receipt for U.S. parcel post c.o.d. charges should be obtained on Standard Form 1165. When receipt cannot be obtained for c.o.d. purchases, imprest fund cashiers located in foreign countries are authorized to certify on the receipt document, "Delivered by (name of post office or carrier) no receipt given." The c.o.d. label shall be removed from the parcel and affixed to the receipt document in support of the reimbursement voucher. Imprest fund cashiers at any location may accept a signed c.o.d. receipt to support the subvoucher if the carrier refuses to sign a Government form.

(2) After completion of the settlement transaction, each subvoucher shall be numbered consecutively and this number placed on the original of the paid receipt documents. These subvouchers will support the cashier's claim for reimbursement of the imprest fund. The imprest fund cashier will not request duplicate receipt documents, nor retain such documents if provided.

(3) When total charges stated on the sales document are paid, without deduction of discounts offered and earned, or without correction of minor billing errors, action will be taken to obtain a refund from the supplier. Collection action may be waived for refunds of one dollar or less.

(e) *Payments.* (1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or other authorized individual shall pay the supplier or supplier's agent and obtain the certification of cash payment as set forth in 213.405(d)(1).

(2) *Receipt from common carrier or post office.* When C.O.D. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales documents, if available.

(3) *Periodic payments.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by FAR 13.404.

(4) *Failure to ship C.O.D.* When material is ordered C.O.D. but is shipped by the supplier subject to payment by check, Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal), may be used to make payment. Under these circumstances, the receiver, shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier, for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(f) *Reimbursement of imprest funds.* (1) The imprest fund shall be reimbursed by use of Standard Form 1129 (Reimbursement Voucher) supported by cashier's subvouchers. The imprest fund cashier shall prepare and submit Standard Form 1129 in triplicate to the disbursing officer as frequently as necessary, but not less often than monthly. At the close of the fiscal year, a reimbursement voucher covering all remaining subvouchers through

30 September shall be submitted before the closing of the allotment accounts for the month. When required, subvouchers shall be summarized by account to complete the accounting classification block of Standard Form 1129 and submitted to the disbursing officer for reimbursement of the imprest fund. One copy of Standard Form 1129 shall be retained by the imprest fund cashier pending the return of the "paid" copy of the form with the reimbursement checks or currency in the amounts requested by the cashier. When the imprest fund is reimbursed by mail, or when long delays in the reimbursement are encountered, the imprest fund cashier may retain copies of subvouchers until reimbursement is accomplished. When copies are retained, they shall be placed in a sealed envelope identified to the reimbursement voucher involved. When reimbursement is received, the sealed envelope will be presented to the official who signed the Administrative Certificate on the Standard Form 1129 for destruction.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129 covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, and obtain a receipt.

(g) *Accounting.* Recordkeeping for the imprest fund shall be as simple as possible consistent with the maintenance of adequate controls. A file of supplier's receipts for amounts paid and not yet vouchered for reimbursement, and copies of paid reimbursement vouchers ordinarily will suffice for the record of the imprest fund cashier.

(h) *Review.* The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid supplier's receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced inspections, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the Comptroller or Chief Accounting Officer of the installation, where such positions exist, but in any case by individuals, excluding the disbursing officer advancing the funds and subordinates of the imprest fund cashier.

Subpart 213.5—Purchase Orders

213.502 Unpriced purchase orders.

(c) Unpriced purchase orders may be issued by using DD Form 1155.

213.503 Obtaining contractor acceptance and modifying purchase orders.

(b)(1) Standard Form 30 shall be used to modify the purchase order for administrative or other changes.

(d)(1) Modifications making administrative changes such as the correction of typographical errors, changes in paying office, and changes in accounting and appropriation data do not require contractor acceptance. In addition, the issuance of no cost Amended Shipping Instructions (ASIs) which modify unilateral purchase orders and which have been concurred in by the contractor by telephone or letter do not require contractor acceptance by signature on the Standard Form 30.

(2) To modify a purchase order prior to commencement of performance and within the scope of the original order, a unilateral modification may be issued on a Standard Form 30. The modification may not be unilaterally issued unless:

(i) The modification reflects the contractor's written or oral confirmation of the proposed revision(s). Unilateral modifications may include withdrawal of all or part of the original purchase order.

(ii) Block 13A. of the Standard Form 30 is annotated to reflect the issuance of an authorized unilateral modification.

(S-70) To otherwise modify the purchase order, and if not previously included in the purchase order, the clauses set forth at 213.507(a)(2) shall be incorporated in the SF 30 and the contractor's acceptance obtained by signature on the SF 30. Subsequent changes pursuant to the Changes clause shall not require contractor acceptance. However, other modifications outside the scope of the Changes clause, such as the addition of the Government Property clause, shall require contractor acceptance by signature on the Standard Form 30.

[51 FR 46137, Dec. 23, 1986, as amended at 52 FR 33414, Sept. 3, 1987; 53 FR 38180, Sept. 29, 1988]

213.505 Purchase order and related forms.

213.505–2 Agency order forms in lieu of optional forms 347 and 348.

(S–70) Optional Forms 347 and 348 are not authorized for use in the Department of Defense.

(1) The DD Form 1155, Order for Supplies or Services, is authorized for use in small purchases made pursuant to FAR part 13 and other simplified purchases made pursuant to FAR part 13 and this supplement. (For additional restrictions applicable to classified purchases, see 213.507(a)(4).) It is also authorized for use in issuing orders against departmental contracts or from Government agencies outside the Department of Defense (see FAR 8.4, 8.6, 8.7, and 16.5). The DD Form 1155 provides in one document:

(i) A purchase order, a blanket purchase agreement, a delivery order under a contract or a delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher;

(iv) A public voucher:

(A) Not exceeding $25,000 when the form is used as a purchase order;

(B) Without monetary limitation when the form is used as a delivery order; and

(C) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements when a firm price has been established;

(v) A document for acceptance by the supplier.

(2) Optional Form 336, Continuation Sheet, provides additional space, or a blank sheet of paper may be used. (SF 36 may be used until stocks are exhausted.)

(3) DD Form 1155c–1, Commissary Continuation Sheet (for use on an optional basis), provides columns suited for commissary procurements.

(4) Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used for all modifications to DD Form 1155 (see 213.503).

(5) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence".

(6) The foregoing forms may be used as snap-out manifold forms, as cut sheets, as reproducible masters, or automatically printed (including computer generated). Continuation sheets may be printed on the reverse of DD Form 1155.

[52 FR 33414, Sept. 3, 1987, as amended at 54 FR 30740, July 24, 1989]

213.505–3 Standard Form 44, purchase order-invoice-voucher.

(b)(1) The $2,500 limitation applies to all purchases except for—

(i) Aviation fuel and oil purchases which will not exceed the small purchase threshold at FAR 13.000; and

(ii) Overseas transactions by warranted contracting officers up to the small purchase threshold at FAR 13.000 in support of contingencies declared by the Secretary of Defense.

[54 FR 16116, Apr. 21, 1989, as amended at 54 FR 30740, July 24, 1989]

213.505–70 Instructions for entries on DD Form 1155 and Optional Form 336.

(a) The instructions herein are mandatory for the preparation of orders if administration is assigned: (1) To DCAS, or (2) to a non DCAS office listed in the DoD Directory of Contract Administration Services Components and the contractor is located in the continental United States or Canada.

(b) The organizational entity codes (address codes) referenced throughout Part 13 are as follows:

(1) *Codes published in DoD Activity Address Directory (DODAAD), DoD 4000.25D.* These codes will be used for Government entities in Blocks 6, 7, 9,

14, 15, and 19. However, the "Ship To" (Block 14) and "Ship To"/"Mark For" (Block 19 (viii) and (xi)) shall use a DODAAD code for non-Government entities for shipments to satisfy MILSTRIP requisitions for that non-Government entity. Foreign Military Sales (FMS) and Military Assistance Program (MAP), "Ship To"/"Mark For" (Block 14) shall use a Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 4000.25-8-M.

(2) *Codes published in Handbook of Non-Government Organizations for MILSCAP H8-1/H8-2 Handbooks.* These codes will be used for non-Government entities in Blocks, 9, 14, and 19, except for the condition as noted in (1) above.

(c) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(d) For orders requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(e) The right hand columns designate by alpha code the activities responsible for completing certain blocks on the DD Form 1155. The legend is "P" for purchasing office, and "—" for not applicable.

TITLE AND INSTRUCTIONS FOR ENTRIES

	Block No.	Applicable to—	
		PO	DO
1	*Contract/Purchase Order Number*—Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in 204.70.	P	P
2	*Delivery Order Number*—Enter PII number for delivery orders as prescribed in 204.70	—	P
3	*Date of Order*—Enter the date of the order, i.e., 2 position numeric year, 3 position alpha month and 2 position numeric day. For example: 84 Sep 30.	P	P
4	*Requisition/Purchase Request Number*—Enter the applicable number authorizing the purchase. When the number differs by line item it will be listed in the schedule and this block annotated "see schedule".	P	P
5	*Certified for National Defense Under DMS Reg 1*—Enter the appropriate claimant program number as defined in Volume I, Section III of the DoD Procurement Coding Manual.	P	P
6	*Issued By*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.	P	P
7	*Administered by*—Enter the name and address of the DCAS or military activity responsible for administration service. The "DoD Directory of Contract Administration Services Components" No. 4105.59H contains the complete listing of activities performing contract administration services. On purchase orders retained by purchasing offices for administration this block may be marked "see block 6." Enter in the code block the organizational entity code (address code) of the administration services office. In the lower right or left-hand corner, insert Criticality Designator code (see FAR 42.1105).	P	P
8	*Delivery FOB*—Indicate the FOB point by checking the applicable box	P	P
9	*Contractor*—(i) Enter the full business name and address of the contractor. Enter in the first code block the organizational entity code (address code) of the contractor. (ii) If it is known that all the work covered by the order is to be performed at an address different from the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the appropriate address code for that facility, i.e., H8-1/H8-2 code for a nongovernment entity or DODAAD code for a government entity. (DODAAD codes shall be used only to indicate "performed at" locations for orders specifying services at a government location.) If it is known that multiple facilities are involved, i.e., when the work covered by the order is performed both at the contractor's address and one or more other facilities, or when all the work is to be performed at two or more facilities other than the contractor's address, indicate the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Optional Form 336 Continuation Sheet and mark the facility code block with "See Schedule." For orders specifying services which will be performed at locations other than the contractor's address, the locations shall be indicated as required above.	P	P

TITLE AND INSTRUCTIONS FOR ENTRIES—Continued

	Block No.	Applicable to—	
		PO	DO
10	*Delivery to FOB Point by*—If a single date of delivery is applicable to the entire order, it shall be entered in this block. Multiple delivery dates will be listed in the schedule and this block annotated "See Schedule".	P	P
11	*Small Business*—Check if the contractor is a small business concern as defined in FAR 19	P	P
	Small Disadvantaged Business—Check if the contractor is a small disadvantaged business concern as defined in FAR 52.219-2.	P	P
12	*Discount Terms*—Enter the discount for prompt payment in terms of percentages and corresponding days allowed. The percentages will be expressed in whole numbers and decimals. For example: 3.25%—10 days; 0.50%—20 days.	P	—
13	*Mail Invoices to*—Enter a reference to the block number containing the appropriate address to which invoices are to be mailed. When not contained in blocks 6, 7, 14 or 15, insert in block 13 "See Schedule".	P	P
14	*Ship To*—If a single ship-to point is applicable to the entire order, the name and address of that point may be entered in this block. Multiple ship-to points will be shown in the schedule and this block annotated "See Schedule".	P	P
15	*Payment Will be Made by*—Enter the name and address of the activity making payment. For purchase orders assigned to DCAS, see the DoD Directory of Contract Administration Components No. 4105.59H or the DCAS Regional Office authorized to make payment. Enter in code block, the organizational entity code (address code) of the paying activity.	P	P
16	*Type of Order*—Indicate by checking the appropriate box whether order is a purchase or delivery order. If a purchase order, further entries are made as follows:	P	P
	(i) Identify the type of quotation, i.e., oral, letter or TWX on which the order is based		
	(ii) Check the box when acceptance of the purchase order by the Contractor is desired and indicate the number of copies of the order to be returned to the issuing office.		
17	*Accounting and Appropriation Data*—Enter the accounting classification applicable to the order. Enter the Accounting Classification Reference Number(s) in accordance with 204.71.	P	P
18	*Item Number*—Enter an item number for each item of supply or service separately identified in accordance with 204.71.	P	P
19	*Schedule of Supplies/Services*—The Schedule contains several elements of data. In order to accomplish standardization objectives, it will be necessary to treat and enter separately certain elements of data as indicated below. Though the order and arrangement of data in the schedule is only mandatory for purchase and delivery orders assigned to DCAS or Plant Cognizance Representatives for administration, it is encouraged, in order to establish uniformity, that this format be adopted for all orders.	P	P
	(i) *National Stock Number (NSN)*—Total Item Quantity for the line or subline item number followed by the appropriate National Stock Number or the word "none" if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue unit price, and dollar amount of the stock number or item cited (see entries for blocks 20, 21, 22 and 23).	P	P
	(ii) *Item Identification*—Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in FAR 10. If multiple accounting classifications apply to the contract, enter the Accounting Classification Reference Number in accordance with 204.71.	P	P
	(iii) *Quantity Variance*—Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.	P	P
	(iv) *Inspection/Acceptance*—Enter the point at which inspection/acceptance will take place	P	P
	(v) *Preservation and Packaging*—Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL-STD726 codes or reference to applicable specifications. 1st Example: MIL STD 726 PRES/PACK: B/10/1/00/2/10/c/00/21/3/22/4/3/2/00. 2nd Example: Preservation and packaging shall be in accordance with instructions below. DGSP P-54 in lieu of level "c" requirement.	P	P
	(vi) *Packing*—When required, enter the packing level designator and specification, standard, or document in which the requirements are stated or state the specific requirements. Ist Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL-STD 794. 2nd Example: Packing. Preserved and packaged items shall be packed level (A, B, or C) in accordance with DESC Manual 4100.1.	P	P
	(vii) *Unitization*—When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. Example 1: Items packed for shipment shall be unitized in accordance with MIL-STD-147. Example 2: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL-L-35078C Type (I or II) Class (A through F for Type I, A through D for Type II). Supplemental waterproofing requirements of Appendix II (are/are not) applicable.	P	P
	(viii) *Ship to*—Enter the organizational entity code (address code) of the ship to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the Accounting Classification Reference Number in accordance with 204.71. When several items are to be shipped to the same point, the code will be listed; but it will not be necessary to repeat the clear text address.	P	P

TITLE AND INSTRUCTIONS FOR ENTRIES—Continued

Block No		Applicable to—	
		PO	DO
	(ix) *Delivery Date*—When multiple delivery dates apply, enter the required date of delivery on the same line with Ship to Code.	P	P
	(x) *Mark For*—Enter the organizational entity code (address code) on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.	P	P
20	*Quantity Ordered/Accepted*—Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship to point within the line item.	P	P
21	*Unit*—Enter the unit of measure applicable to the line items described	P	P
22	*Unit Price*—Enter the unit price applicable to the line item described	P	P
23	*Amount*—Enter the extended dollar amount (quantity × unit price) for each line item	P	P
24	*Contracting/Ordering Officer*—The contracting/ordering officer's signature will be entered in this block.	P	P
25	*Total Amount*—Enter the total dollar amount for all line items on the order	P	P
26–42	These blocks are utilized in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.		

[51 FR 46137, Dec. 23, 1986, as amended at 52 FR 33414, Sept. 3, 1987; 53 FR 38242, Sept. 29, 1988]

213.505-71 Use of DD Form 1155 as a public voucher.

DD Form 1155 is authorized for use as a public voucher:

(a) Not exceeding $25,000 when the form is used as a purchase order,

(b) Without monetary limitation when the form is used as a delivery order, and

(c) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements when a firm price has been established.

213.507 Clauses.

(a) Purchase orders shall incorporate the clause requirements addressed in (a) (1) through (4) of this section per FAR 52.102. Where the provisions of (a) (1) and (2) of this section do not meet the requirements of a specific order, (a)(3) provides authorization for such other clauses as appropriate.

(1) The following clauses are normally appropriate for unilateral purchase orders. These clauses shall be included in each order as applicable.

(i) FAR 52.252-2, "Clauses Incorporated by Reference" (required only if other clauses are incorporated by reference)

(ii) FAR 52.203-1, "Officials Not to Benefit"

(iii) FAR 52.203-3, "Gratuities"

(iv) FAR 52.203-5, "Covenant Against Contingent Fees"

(v) FAR 52.203-7, "Anti-Kickback Procedures"

(vi) FAR 52.212-9, "Variation in Quantity"

(vii) FAR 52.222-3, "Convict Labor" (unless the order will be subject to the Walsh-Healey Public Contracts Act, see FAR 22.6)

(viii) FAR 52.222-26, "Equal Opportunity" (unless exempted by FAR 22.807 exceptions)

(ix) FAR 52.225-3, "Buy American Act—Supplies"

(x) FAR 52.232-1, "Payments"

(xi) [Reserved]

(xii) FAR 52.233-1,"Disputes"

(xiii) FAR 52.246-1, "Contractor Inspection Requirements" (except when an alternate level of inspection or quality assurance is necessary pursuant to FAR 46.202-3)

(xiv) FAR 52.246-16, "Responsibility for Supplies"

(2) When a purchase order requires the contractor's written acceptance, the following clauses shall be included in addition to those determined to be applicable in accordance with (a)(1) of this section:

(i) FAR 52.243-1, "Changes—Fixed-Price", with appropriate alternate as necessary

(ii) DFARS 252.243-7001, "Pricing of Adjustments"

(iii) An appropriate "Termination for Convenience of the Government" clause from FAR 52.249-1, FAR 52.249-3, FAR 52.249-4, or FAR 52.249-5

(iv) An appropriate "Termination for Default" clause from FAR 52.249-8, FAR 52.249-9, FAR 52.249-10, or FAR 52.249-11

(3) Any other clauses required or permitted shall be incorporated consistent with the guidance prescribing their use.

(4) The DD Form 1155 may be used when the acquisition is classified if:

(i) The purchase is made within the United States, its possessions and Puerto Rico.

(ii) The Security Requirements clauses in FAR 52.204-2 is inserted in the schedule.

(iii) DD Form 254, Contract Security Classification Specification, is incorporated in the purchase order. (See FAR 4.403(c) and FAR 53.204-1.)

(iv) The contractor's written acceptance of the purchase order is obtained at the time of purchase order issuance.

[52 FR 33415, Sept. 3, 1987, as amended at 54 FR 7427, Feb. 21, 1989]

PART 214—SEALED BIDDING

Subpart 214.2—Solicitation of Bids

Sec.

214.201 Preparation of invitation for bids.
214.201-2 Part I—The Schedule.
214.201-6 Solicitation Provisions.
214.202 General rules for solicitation of bids
214.202-1 Bidding time.
214.202-5 Descriptive literature.
214.205 Solicitation mailing lists.
214.205-1 Establishment of lists.
214.207 Pre-bid conference.

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.
214.404-1 Cancellation of invitations after opening.
214.406 Mistakes in bids.
214.406-3 Other mistakes disclosed before award.
214.408 Information to bidders.
214.408-2 Award of classified contracts.

Sec.

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.
214.503-1 Step one.
214.503-2 Step two.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46144, Dec. 23, 1986, unless otherwise noted.

Subpart 214.2—Solicitation of Bids

214.201 Preparation of invitation for bids.

214.201-2 Part I—The Schedule.

When a DD Form 1423 is used to list technical data which is to be delivered under the contract in accordance with 227.475-1, it shall be designated as an exhibit and established, as such, in accordance with 204.7105.

[52 FR 19871, May 28, 1987]

214.201-6 Solicitation Provisions.

See 217.200 concerning statutory restrictions on the inclusion of option evaluation provisions in IFBs.

(S-70) The contracting officer shall insert the provision at 252.214-7001, Domestic Source Restriction, in all solicitations that are restricted to domestic sources under the authority of FAR 6.302-3.

[53 FR 38174, Sept. 29, 1988, as amended at 53 FR 38242, Sept. 29, 1988]

214.202 General rules for solicitation of bids.

214.202-1 Bidding time.

(a) *Policy.* For potential sources in participating countries, see 225.7403(a); for sources in FMS/offset arrangement countries, see 225.7310(c)(2); and for sources in defense cooperation countries, see 225.7502.

(b) When requested by a source located in a participating country or a designated country as defined in part 25, the contracting officer shall provide for a 45-day bidding period if this is consistent with the Government's requirements.

[51 FR 46144, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987]

214.202-5 Descriptive literature.

(d) *Requirements of invitation for bids.* When brand name or equal purchase descriptions are used, the requirements of FAR 14.202-5 are met by inserting in the invitation for bids the brand names provision at 252.210-7000.

[51 FR 46144, Dec. 23, 1986, as amended at 53 FR 38174, Sept. 29, 1988]

214.205 Solicitation mailing lists.

214.205-1 Establishment of lists.

(a) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see Supplement No. 4, "Procedures for Submission of Applications to be Placed on Research and Development Bidders Mailing Lists."

214.207 Pre-bid conference.

All interested parties, including representatives from qualifying country sources, shall be invited to the pre-bid conference. (See 225.7403(a), 225.7310(c)(2), and 225.7502.)

[51 FR 46144, Dec. 23, 1986, as amended at 53 FR 38246, Sept. 29, 1988]

Subpart 214.4—Opening of Bids and Award of Contract

214.404 Rejection of bids.

214.404-1 Cancellation of invitations after opening.

(c) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

(e) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

214.406 Mistakes in bids.

214.406-3 Other mistakes disclosed before award.

(e)(1) Authority for making a determination under FAR 14.406-3(a), (b), and (d) may be delegated, without power of redelegation, as follows:

(i) Department of the Army: To the Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research, Development and Acquisition); General Counsel of the U.S. Army Materiel Command; General Counsel of the Office of the Chief of Engineers; Chief, Contract Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(ii) Department of the Navy: To the Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; the Deputy Commander Purchasing, Naval Supply Systems Command Headquarters.

(iii) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(iv) Defense Logistics Agency: The General Counsel and Assistant General Counsel.

(v) National Security Agency: Director of Procurement.

(vi) Defense Communications Agency: The General Counsel.

(vii) Defense Nuclear Agency: The General Counsel.

(viii) Defense Mapping Agency: The General Counsel.

(e)(2) Authority to elect not to correct a bid but to allow withdrawal when clear and convincing evidence establishes only the existence of the mistake may be delegated, without power of redelegation, to any contracting activity or office having legal counsel available. Any case involving evidence that is less than clear and convincing shall be processed under FAR 14.406-3(d) and paragraph (1) above.

(h) A signed copy of the administrative determination authorizing modification of the bid made in accordance with FAR 14.406-3 shall accompany the appropriate finance center copy of the contract award.

[51 FR 46144, Dec. 23, 1986, as amended at 53 FR 38180, Sept. 29, 1988]

214.408 Information to bidders.

214.408-2 Award of classified contracts.

Disposition action shall be taken in accordance with the Industrial Security Manual (DoD 5220.22-M).

Subpart 214.5—Two-Step Sealed Bidding

214.503 Procedures.

214.503-1 Step one.

(a) Requests for technical proposals may be in the form of a letter.

(i) The written notification to offerors required by FAR 14.503-1(i) shall advise offerors of the discontinuance of two-step sealed bidding and the reason therefor.

214.503-2 Step two.

(a)(3) The statement required by FAR 14.503-2(a)(3) should be set forth in the item description by a provision substantially in the form of the following example:

> Radio Antenna, in accordance with Exhibit No. _____ dated _____ (use other description of specifications as appropriate), and your Technical Proposal _____ (insert specific identification of the bidder's proposal, including any revision thereof as finally accepted), incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

PART 215—CONTRACTING BY NEGOTIATION

Subpart 215.1—General Requirements for Negotiation

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215.103 Converting from sealed bidding to negotiation procedures.
215.170 Negotiation of initial production contracts for technical or specialized military supplies.
215.171 Abstract of offers.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.402 General.
215.406 Preparing Requests for Proposals (RFP's) and Requests for Quotations (RFQ's).
215.406-2 Part I—The Schedule.
215.407 Solicitation provisions.
215.414 Forms.

Subpart 215.5—Unsolicited Proposals

215.504 Advance guidance.
215.506 Agency procedures.
Sec.
215.506-1 Receipt and initial review.
215.507 Contracting methods.

Subpart 215.6—Source Selection

215.605 Evaluation factors.
215.607 Disclosure of mistakes before award.
215.608 Proposal evaluation.
215.611 Best and final offers.
215.613 Alternative source selection procedures.

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.
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Subpart 215.8—Price Negotiation

215.801 Definitions.
215.802 Policy.
215.803 General.
215.804 Cost or pricing data.
215.804-1 General.
215.804-2 Requiring certified cost or pricing data.
215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
215.804-6 Procedural requirements.
215.804-7 Defective cost or pricing data.
215.804-8 Contract clauses.
215.805 Proposal analysis.
215.805-1 General.
215.805-2 Price analysis.
215.805-4 Technical analysis.
215.805-5 Field pricing support.
215.805-70 Cost realism analysis.
215.806 Subcontract pricing considerations.
215.806-3 Field pricing reports.
215.807 Prenegotiation objectives.
215.808 Price negotiation memorandum.
215.809 Forward pricing rate agreements.
215.810 Should-cost analysis.
215.811 Estimating systems.
215.811-70 Definitions.
215.811-71 Policy.
215.811-72 Applicability.
215.811-73 Responsibilities.
215.811-74 Contractor estimating system standard.
215.811-75 System disclosure and maintenance requirements.
215.811-76 Characteristics of an adequate estimating system.
215.811-77 Indicators of potentially significant estimating deficiencies.
215.811-78 Procedures.
215.811-79 Contract clause.
215.870 Procedures for identifying contractors' unallowable costs.
215.871 Estimated data prices (DD Form 1423).
215.872 Capital investment incentives.

Sec.
215.873 Production special tooling and production special test equipment (PST and PSTE).
215.874 Follow-up on contract audit reports.
215.875 Availability of contractor records.
215.876 Work measurement systems.

Subpart 215.9—Profit

215.900 Scope of subpart.
215.902 Policy
215.903 Contracting officer responsibilities.
215.905 Profit-analysis factors.
215.905-1 Common factors.
215.970 Weighted Guidelines Method.
215.970-1 Procedures for establishing a profit objective.
215.970-2 Instructions for completing DD Form 1547.
215.971 Alternate approaches to Weighted Guidelines Method.
215.971-1 Recognized Profit Factors.
215.971-2 Offset policy for facilities capital cost of money.
215.971-3 Instructions for completing DD Form 1547.
215.972 Modified Weighted Guidelines Method for nonprofit organizations.
215.972-1 Procedures for establishing fee objectives.
215.972-2 Instructions for completing DD Form 1547.
215.973 Cost-plus-award-fee contracts.

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests and Mistakes

215.1001 Notifications to unsuccessful offerors.
215.1003 Debriefing of unsuccessful offerors.
215.1070 Classified information.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46146, Dec. 23, 1986, unless otherwise noted.

Subpart 215.1—General Requirements for Negotiation

215.103 Converting from sealed bidding to negotiation procedures.

Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

215.170 Negotiation of initial production contracts for technical or specialized military supplies.

(a) The production of important new technical or specialized military supplies generally involves development, evaluation, and initial production phases. Examples of such supplies are tanks, radar, guided missiles, aircraft, rockets, and equipment of similar complexity; major components of such equipment as the foregoing; and any items of technical or specialized nature necessary for the use, maintenance or operation of such equipment. Contracting officers shall avoid, wherever practicable, awarding initial production contracts for supplies until completion of the development and evaluation phases. At the time of placing the initial production contract, it is essential that the Government be completely free to select the contractor as the best interest of the Government may dictate. In the placement and administration of research or development contracts, no commitments shall be made to contractors with respect to obtaining subsequent production contracts. Acquisition of initial production quantity of an item shall not be initiated until the item has been approved for service use unless prior approval has been obtained. When justified by special circumstances, acquisition of production quantities in advance of approval for service use may be authorized for the Departments of the Army and Air Force by Heads of the Contracting Activity, and for the Department of the Navy by the appropriate authority set forth in SECNAV Instructions 3900.30 and 3960.2.

(b) In connection with the foregoing, when consistent with FAR 6.302-1(b)(2), it may be in the best interest of the Government that the initial production contract for technical and specialized supplies be placed with the contractor responsible for the development of the design for such supplies. Accordingly, it is essential that, in placing such initial production contracts, an analysis be made of the importance to be attached to the following considerations:

(1) Extensive preliminary research and development work which can be put to most effective use in production by the research and development contractor for any of the following reasons:

(i) A need for adaptation of the newly developed equipment for quantity manufacture, and for introduction of advanced production methods, together with a significant interrelationship between the design engineering and production engineering, which will yield best results from the standpoint of performance, reliability, and producibility; or

(ii) The substantial time and money which would be required for another contractor to indoctrinate and train engineering staff in the specialized techniques or novel design concepts which have been employed, thereby adding to production lead time.

(2) Continuing improvement of the equipment, concurrent with production which can be most effectively accomplished by a single contractor because of the advantages of unified responsibility and close coordination of improved design features with production processes and equipment.

(3) Substantial time and effort which have been already expended by the development contractor in developing a prototype.

(4) The advantages to be gained through obtaining production drawings, e.g., detailed manufacturing, process, and assembly drawings, with rights to use for acquisition purposes at the earliest possible date for competitive reprocurement purposes by placing production engineering contracts and the first production contract with the developer (see (d) below).

(c) When it is in the Government's interest to award the initial production contract to the development contractor, price alone should not be allowed to dictate an award elsewhere unless a fair and reasonable price cannot be negotiated with the development contractor, or unless the price advantage in award to another supplier is so substantial as to outweigh the other factors involved. This paragraph 215.170 is not to be construed to require or to prevent competitive pricing. Initial production contracts shall not be awarded to development contractors who do not have fully adequate and available financial, technical and production resources.

(d) The number of items to be acquired under an initial production contract will be established only after considering all pertinent factors, including the practical minimum quantity suitable to permit the development of the production design and a data package adequate to establish competitive acquisition of the item at the earliest practicable date.

(e) To the extent practicable, the initial production contract should also provide for the furnishing of an initial supply of special testing equipment, special tools, demonstration sets, and manuals required for operation, maintenance and training.

[51 FR 46146, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987]

215.171 Abstract of offers.

The abstract of offers required by FAR 4.803(a)(10) shall be prepared on Abstract of Offers (SF Form 1409) or Abstract of Offers—Construction (SF Form 1419) appropriately modified (see FAR 53.2) to include all the information necessary for evaluation (but see FAR 15.413 and FAR 15.610). These forms need not be used in the case of acquisition from a single source of supply, for research and development, for the chartering of vessels by the Military Sealift Command, for the acquisition of coal and petroleum products by the Defense Fuel Supply Center, or for perishable subsistence items by the Defense Personnel Support Center.

Subpart 215.4—Solicitation and Receipt of Proposals and Quotations

215.402 General.

(f) Examples of circumstances under which an oral solicitation may be used include those listed in 206.302-2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. Should the issuance of a resulting contractual instrument be unduly delayed, following oral solicitation, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

215.406 Preparing Requests for Proposals (RFP's) and Requests for Quotations (RFQ's).

215.406-2 Part I—The Schedule.

When a DD Form 1423 is used to list technical data which is to be delivered under the contract in accordance with 227.475-1, it shall be designated as an exhibit and established, as such, in accordance with 204.7105.

[52 FR 19871, May 28, 1987]

215.407 Solicitation provisions.

(S-71) In accordance with 214.201-6(S-70), insert the provision at 252.214-7001, Domestic Source Restriction, in solicitations.

[53 FR 38175, Sept. 29, 1988]

215.414 Forms.

(a) Letter RFPs and RFQs may also be used provided they otherwise comply with the requirements of FAR and this regulation.

(b) In the acquisition of subsistence, DPSC Form 300, Order for Subsistence, may be used for award purposes.

Subpart 215.5—Unsolicited Proposals

215.504 Advance guidance.

(b)(2) Agencies shall, where applicable, in addition to the requirements of FAR 15.504(b)(2), also make available to potential offerors of unsolicited proposals requirements concerning cost sharing (see 235.003(b)).

215.506 Agency procedures.

215.506-1 Receipt and initial review.

(c) In addition to the requirements of FAR 15.506-1(c), agencies shall advise offerors of the disposition or intended disposition of the material submitted as the unsolicited proposal. The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which meets the requirements of FAR 15.506-1(a). When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

215.507 Contracting methods.

(b)(S-70) Contracts for studies, analyses, or consulting services (see FAR 37.2) may be entered into on the basis of an unsolicited proposal as provided for in 206.302-1(a)(S-70).

[53 FR 38203, Sept. 29, 1988]

Subpart 215.6—Source Selection

215.605 Evaluation factors.

(a) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, see 219.705-2(d).

[55 FR 19077, May 8, 1990]

215.607 Disclosure of mistakes before award.

(c)(3) Authority to make the determination is delegated to the head of the contracting activity with authority to redelegate to the chief of the contracting office.

215.608 Proposal evaluation.

(a)(1) See also 215.805.70 regarding use of "cost realism analysis".

(b) Unless otherwise specified in agency procedures, the contracting officer shall make the written determination.

(S-70) When a procurement is subject to acquisition streamlining, the contracting officer may want to include in the solicitation evaluation criteria on cost-performance trade-offs, application/tailoring recommendations, and cost-effectiveness of the proposed technical approach.

[51 FR 46146, Dec. 23, 1986, as amended at 53 FR 35202, Sept. 12, 1988; 53 FR 38180, Sept. 29, 1988; 54 FR 16116, Apr. 21, 1989]

215.611 Best and final offers.

(c)(S-70) Second or subsequent requests for best and final offers require close monitoring and control at appropriate management levels in order to avoid auction techniques, enhance protection of source selection sensitive data, and ensure that contracts are awarded fairly and promptly. Unavoidable changes in requirements or funding or other compelling reasons may require a second or subsequent request for best and final offers; however, these circumstances should seldom occur when proper planning and review is accomplished before the initial request for best and final offers. Each request for second or subsequent best and final offers shall be approved before the request is issued, as follows:

(i) For competitive negotiated acquisitions under formal source selection (see FAR 15.612(a)), by the Source Selection Authority (SSA) and the Service Acquisition Executive (SAE). The SAE may delegate this authority to a level no lower than the Head of the Contracting Activity (HCA).

(ii) For all other competitive negotiated acquisitions, by the HCA. The HCA may delegate this authority to a level no lower than the chief of the contracting office.

(S-71) Each HCA shall establish a system for reporting and documenting second or subsequent requests for best and final offers, which shall as a minimum include—

(i) The total number of competitive negotiated acquisitions awarded;

(ii) The number of those acquisitions for which a second or subsequent request for best and final offers was approved and issued; and

(iii) The reasons for approving each second and subsequent request for best and final offers.

(S-72) Each HCA shall periodically examine the data collected and recorded under 215.611(c)(S-71), analyze trends, and take any necessary action to provide training, revise approval levels or otherwise ensure that second or subsequent requests for best and final offers are used only when clearly necessary and unavoidable. The HCA shall provide summary reports to the SAE as specified in departmental procedures.

[53 FR 32621, Aug. 26, 1988, as amended at 53 FR 46457, Nov. 17, 1988]

215.613 Alternative source selection procedures.

"Four-Step" Source Selection Procedures are as follows:

(a) *General.* (1) The Four-Step process, briefly described, is the (i) submission and evaluation of the offeror's technical proposal; (ii) submission and evaluation of the offeror's cost proposal; (iii) establishment of the competitive range and selection of the apparent successful offeror; and (iv) negotiation of a definitive contract.

(2) In the Four-Step process, deficiencies are not revealed to the individual offerors, while in the conventional process protracted discussions may evolve around proposal deficiencies.

(3) These procedures are designed primarily to: focus attention on technical excellence, maintain the integrity of each offeror's proposal, provide visibility of discriminating features between proposals, reduce the opportunity for buy-ins, preclude the opportunity for the use of auctioning techniques and assure a disciplined and orderly process in the selection of sources. To this end, early and open dialogue, e.g., pre-solicitation notices and conferences, pre-proposal conferences, informal solicitations and the tailoring of specifications, is encouraged to establish a better understanding of the Government's needs.

(4) Following the technical evaluation and discussions, cost/price proposals are obtained from each offeror together with any necessary clarifications of technical proposals. Subsequent to the receipt of the cost/price proposals and any technical clarifications, a competitive range is established. Those proposals outside the competitive range are eliminated at this point and the offerors so notified. Limited discussions are then held with the remaining offerors on their cost/price proposals and any technical clarifications. Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified when it is determined to be no longer in the competitive range.

(5) At the completion of technical and cost/price discussions, a common cut-off date for the receipt of final technical and cost/price proposals based upon those discussions is then established and the remaining offerors so notified. An evaluation is then made of each offeror's total proposal and a single offeror is normally selected for negotiation of a contract (see 215.613(h)(7)). In order to release proposal teams at the earliest practical date, all offerors are notified of the contractor selected.

(6) A definitive contract is then negotiated with the selected offeror and contract award accomplished. These negotiations must be completed in a timely manner and must not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(b) *Applicability.* These procedures may be used at the discretion of the Contracting Officer for competitively negotiated research and development acquisitions with an estimated value of two million dollars or more. They may also be used for any other acquisition when approved in accordance with Departmental procedures subject to the restrictions below. Use of these procedures is most appropriate when Government evaluation of initial proposals, without discussion of proposal deficiencies, will be sufficient to determine the best overall offer to the Government. Acquisitions for which these procedures are not used shall follow the procedures of FAR 15.6.

(c) *Restrictions.* These procedures should not be used for acquisitions in which the necessity to conduct extensive negotiations is anticipated. These procedures shall not be used for any acquisitions which:

(1) Are acquired pursuant to FAR 6.302-2;

(2) Are solely for personal or nonpersonal services;

(3) Are for architect-engineer services; or

(4) Have an estimated value of less than two million dollars.

(d) *Procedures.* Acquisitions subject to this paragraph shall be conducted in accordance with the following procedures:

(1) *Solicitations.* Solicitations shall be developed in accordance with FAR 15.4 and shall include the following special requirements and instructions:

(i) A general statement explaining the concept and procedures to be used in the selection of a contractual source of the proposed acquisition.

(ii) The relative importance of technical/system performance criteria.

(iii) A notification that any proposals which are unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements and may be grounds for the rejection of the proposal.

(iv) A schedule of planned source selection events including, but not limited to, specific dates for the submission of both technical and cost/price proposals.

(v) Provisions requiring sequential submission of separate technical and cost/price proposals.

(vi) Requirements for the technical proposal to include, where appropriate, identification of trade-offs among performance, production costs, operating and support costs, schedule and logistic support factors; and requirements for cost estimates which illustrate the impact of these trade-offs. In addition, requirements for the technical proposal to include information necessary to indicate that the design to cost and operating and support cost objectives, when used, would be achieved when the item(s) enters production.

(vii) Requirements for the cost proposal to include the detailed, substantiating cost information pertaining to the performance of the contemplated contract and other detailed data necessary for evaluation of cost factors to be considered in the source selection decision.

(viii) A statement that both technical and cost/price discussions will be limited as set forth in (e) and (f) below.

(ix) A notification that negotiations will be conducted only with the selected offeror, and that offerors should represent their most favorable technical and cost/price proposals initially.

(e) *Step one—evaluation and discussion of technical proposals.* A detailed evaluation shall be accomplished on all technical proposals received based upon the established criteria in the solicitation. Upon completion of the initial evaluation, limited discussions shall be conducted with all offerors for the purpose of achieving maximum understanding and clarification of the contents of the proposal. During such discussions, offerors shall not be advised of deficiencies in their proposals. A deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements. Offerors shall be advised of areas of their proposal in which the intent or meaning is unclear or for which additional substantiating data is required for evaluation. When necessary for complete understanding of proposals, clarifications and/or additional substantiating data may be requested concerning those areas of an offeror's proposal when there is uncertainty that a deficiency exists. In most cases, clarification of proposals and additional substantiating data, if required, will be included by offerors with their cost/price proposals in Step Two. When it is apparent from the proposals received that the Government's requirements have been misinterpreted, clarification shall be provided to all offerors to ensure complete understanding.

(f) *Step two—evaluation and discussion of cost/price proposals.* (1) Following the technical evaluation and discussions, complete, fully documented cost/price proposals and clarifications, if required, of technical proposals shall be obtained. Each proposal shall be evaluated and those which have no reasonable chance for award may be eliminated from the competition at this point and the offerors notified that they are outside the competitive range and will be given no further consideration.

(2) Limited discussions as indicated herein shall then be conducted with all remaining offerors in connection with their respective cost/price proposals, either on an element-by-element basis or in their entirety. These discussions may include (i) rectification and/or correction of inconsistencies or mathematical errors; (ii) correlation of elements of cost with their respective technical efforts, in order to assess the extent of realism in the cost proposal; and (iii) discussion necessary to ensure a complete understanding of the Government's requirements, what is being offered (including delivery schedules, trade-offs among performance, design to cost, life cycle cost, and logistics support factors) and other contract terms. An offeror shall not be advised during these discussions that its proposal or any of its elements are either too high or too low. When discussions of technical proposals are required they shall be limited as stated in (e) above.

(3) Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified (i) when the proposal was initially included in the competitive range because it might have been susceptible of being made acceptable, or (ii) because there was uncertainty whether it was in the competitive range, and in either case, through discussions relating to ambiguities and omissions it becomes clear that the proposal should not have been included in the competitive range initially.

(g) *Step three—common cut-off.* (1) A common cut-off date for receipt of technical and cost/price proposal clarifications or substantiations shall be established and all participants so notified in accordance with FAR 15.611.

(2) Offerors shall be informed that any changes incorporated in the final proposal must be fully substantiated. Supporting data must provide traceability to the causative technical, business, or financial conditions that brought about any change. Lump sum reductions in cost/price shall not be accepted without supporting rationale.

(3) After the common cut-off date, requirements shall not be imposed for additional proposals or revisions to submitted technical or cost proposals

without the prior approval of an official at a level no lower than that of a Head of a Contracting Activity (HCA). Auctioning through repetitive calls for offers is strictly prohibited.

(4) Final detailed negotiations leading to the bilateral execution of a definitive contract shall be deferred until after the selection of an offeror for final contract negotiations.

(h) *Selection of an offeror for final contract negotiations.* (1) Complete evaluation of all factors in accordance with the criteria set forth in the solicitation, including cost/fee or price, shall be conducted with careful regard for security procedures and good business practice.

(2) Based upon the offeror's latest total acceptable technical and cost proposals, selection of a single source shall be made for the conduct of final negotiations leading to a definitive contract. (This does not preclude selecting more than one source when multiple sources are desired; e.g., competitive prototypes.) Procedures for waiver of this requirement are at (7) below.

(3) Proposals unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the contract requirements and may be grounds for rejection of the proposal.

(4) The selection will be based on an integrated decision, involving consideration of technical approach, capability, management, design to cost, operating and support cost objectives, historical performance, price/cost and other factors.

(5) Following selection of the best offeror, all competitors shall be notified of the source to be awarded the contract, subject to negotiation of a satisfactory definitive contract.

(6) The source selection decision is conditional in that award of a fully negotiated contract to the selected offeror must be accomplished within a period of time prescribed by the source selection authority. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(7) Proposed contracts may be negotiated with two or more offerors within the competitive range, if the HCA makes a written determination that a final selection of a single source should not be made until such proposed contracts have been negotiated. Such determination shall not be made solely for the purpose of maintaining a competitive environment. However, such a determination may be based, for example, on unique situations where there are no significant discriminating technical or cost features between two or more offerors. Notification of such determination shall be provided to OASD(A&L)(P) through Departmental procedures.

(i) *Step four—final negotiations and contract award.* Final negotiations leading to bilateral execution of a single definitive contract will be conducted only with the selected offeror except when multiple negotiations are authorized by the HCA. Final negotiations shall include the disclosure and resolution of all technical deficiencies and all unsubstantiated areas of cost. Negotiations shall not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event that such changes are necessary, the procedures in FAR 15.606 shall be followed. The final negotiated contract must represent a reasonable probability that the Government's requirements will be satisfied at a fair and reasonable cost/fee or price.

(j) *Debriefings.* Formal debriefings shall be conducted after contract award, in accordance with FAR 215.1002 and 215.1002.

[51 FR 46146, Dec. 23, 1986, as amended at 54 FR 7427, Feb. 21, 1989; 54 FR 26207, June 22, 1989]

Subpart 215.7—Make-or-Buy Programs

215.704 Items and work included.

The minimum dollar threshold within DoD referred to in FAR 15.704(b) is $1 million.

[51 FR 46146, Dec. 23, 1988, as amended at 53 FR 50415, Dec. 15, 1988]

215.706 Evaluation, negotiation, and agreement.

(d) Contracting officers shall also give primary consideration to the effect of the proposed make-or-buy program on the contemplated type of subcontract.

Subpart 215.8—Price Negotiation

215.801 Definitions.

Cost realism analysis, as used in this subpart, means a review of the cost position of an offeror's proposals to determine if the overall costs proposed are realistic for the work to be performed, if the costs reflect an offeror's understanding of the requirements, or if the costs are consistent with the various elements of the technical proposal.

[54 FR 16116, Apr. 21, 1989]

215.802 Policy.

(b)(2) (This prohibition neither prevents the negotiation of indirect costs and other rates applicable to several contracts nor prohibits FPRA's applicable to several contracts.)

215.803 General.

(b) When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

[51 FR 46146, Dec. 23, 1986, as amended 53 FR 38194, Sept. 29, 1988]

215.804 Cost or pricing data.

215.804-1 General.

(a) Partial or limited data may be requested when less than complete cost analysis (e.g., analysis of only specific factors) will provide a reasonable pricing result on awards under $100,000 without the submission of complete cost or pricing data. The contracting officer shall request only that data which the contracting officer considers adequate to support the limited extent of the cost analysis required.

[53 FR 38237, Sept. 29, 1988]

215.804-2 Requiring certified cost or pricing data.

(a)(1)(ii) The term "price adjustment" or "pricing adjustment" means the aggregate increases and/or decreases in costs plus applicable profits.

(b)(1) Cost or pricing data shall not be required merely in anticipation of post-award review of the contract.

[51 FR 46146, Dec. 23, 1986, as amended 53 FR 38194, 38237, Sept. 29, 1988]

215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a)(1)(i) When there is a reasonable expectation that adequate price competition will result on a particular procurement, the contracting officer should rarely have a need to require the submission or certification of cost or pricing data regardless of the type of contract. Unnecessarily requiring the submission of cost or pricing data is not in the best interest of the Government because it leads to increased proposal preparation costs, extends procurement leadtime, and wastes both contractor and Government resources.

(a)(1)(ii) When economic price adjustment provisions are included in competitive acquisitions, see FAR 16.203-2(b).

(a)(S-70) The Department of Defense has waived the following requirements with respect to cost or pricing data and certification thereof:

(i) Certification, but not submission of, cost or pricing data for cost-reimbursement-no-fee prime and subcontracts with nonprofit educational institutions and other nonprofit organizations. However, subcontractors other than nonprofit educational institutions and other nonprofit organizations are still subject to the certification requirements and the contracting officer will require, by appropriate contractual provision, subcontractor compliance with certification requirements.

(ii) Submission or certification of cost or pricing data from the Canadian Commercial Corporation and its subcontractors.

(b)(1) Adequate price competition may exist for any contract including cost-reimbursement contracts, even though price is not the primary factor in the evaluation of proposals, provided that price is a substantial factor in the source selection criteria.

(2) If, after receipt of proposals, it is determined that adequate price competition does not exist, then cost or pricing data shall be obtained and certified as required (see FAR 15.804-2).

(b)(2)(ii) An example of a determinative advantage is where substantial costs, such as start-up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position.

(3) Examples of a price "based on" adequate price competition are: (i) Exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with FAR 17.207(d); and (ii) an item normally is acquired competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition.

(b)(S-70) *Adequate Price Competition in Dual Source Programs.* (i) In the case of dual source programs, adequate price competition normally exists when prices are solicited across a full range of step quantities, normally including a 0-100 per cent split from at least two offerors who are individually capable of producing the full quantity, and

(A) The award is made to the offeror with the lowest evaluated price;

(B) When the award is split, if the combined price of both awards is the lowest evaluated price in the range of offers submitted, or

(C) When the combined price of both awards is not the lowest evaluated price in the range of offers submitted, if the price reasonableness of all prices awarded is clearly established on the basis of price analysis.

(ii) The procedures in paragraph (b)(S-70)(i) above may also be used in multiple source acquisitions, including those for the mobilization base.

(c)(6) In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being acquired and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two.

(e)(3) In anticipation of repetitive acquisitions of a catalog item, the contracting officer or the cognizant ACO may make special arrangements for submission of the exemption claim. The submission need not be on a Standard Form 1412, but shall include any data required by the form and include or incorporate by reference all the applicable definitions, representations and rights included in the form. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. Such approval may be extended to other Government contracting offices with their concurrence.

(i) Set forth below is a format for the D&Fs to be made by the agency head with respect to waiving the requirement for submission of cost or pricing data and certification thereof, as required by 10 U.S.C. 2306a(b)(2), and for waiving the inclusion of the required clauses. The format may be used also for the D&Fs for such waiver made by the Head of the Contracting Activity for contracts with foreign governments or agencies thereof.

(MILITARY DEPARTMENT OR AGENCY)

Determination and Findings

Authority to Waive Submission of Cost or Pricing Data and Certificate

Upon the basis of the following findings and determination which I hereby make as agency head (1), the requirement for submission of cost and pricing data and certificate described below may be waived pursuant to the authority of 10 U.S.C.

2306a(b)(2), as implemented by FAR 15.804-3(i).

FINDINGS

1. The (2) proposes to enter into a contract with (3) for the acquisition of (4).

2. Pursuant to FAR 15.804-2, the proposed contractor is required to submit certified cost or pricing data. However, waiver of submission of the certified cost or pricing data described below is justified for the reasons indicated: (5).

DETERMINATION

1. The requirement for submission of cost or pricing data for the proposed contract action may be waived.

Date ——————————————

NOTES:

(1) In the case of a contract with a foreign government or agency thereof, delete the words "agency head" and substitute therefor "head of a contracting activity."

(2) Contracting activity.

(3) Name of supplier.

(4) Brief description of supplies or services.

(5) Describe the cost or pricing data requirements to be waived. (The waiver may be partial, i.e. limited to particular cost or pricing data.) Set forth the circumstances and conditions which make the proposed contract action an exceptional case and state the reasons which justify the proposed waiver.

[51 FR 46146, Dec. 23, 1986, as amended 53 FR 38194, 38237, 38246, Sept. 29, 1988; 54 FR 16116, Apr. 21, 1989; 54 FR 20592, May 12, 1989]

215.804-6 Procedural requirements.

(b)(2) The following may be used with the SF 1411:

(i) When Contract Cost Data Reports are required by the purchase request, the contractor shall be required to submit DD Forms 1921 and/or 1921-1 to support the SF 1411. The DD Forms 1921 shall be prepared in accordance with the Contractor Cost Data Reporting (CCDR) System (Army—AMCP 715-8, Navy—OASN(S&L), CBM-CPR, and Air Force—AFLCP/AFSCP 800-15). The contractor supporting data shall be prepared in such a manner as to support each cost element on the DD Form 1921-1.

(ii) *Contract pricing proposal supporting schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

(c) To the extent possible, the understanding should relate to the contractor's formal estimating system. Notwithstanding the foregoing, significant matters important to contractor management and to the Government and any related data within the contractor's organization or the organization of a subcontractor or prospective subcontractor would be expected to be current on the date of agreement on price and, therefore, will be treated as reasonably available as of that date. Although changes in the labor base or in prices of major material items are generally significant matters, no hard and fast rule can be laid down since what is significant can depend upon such circumstances as the size and nature of the acquisition.

(e) The referral to higher authority shall also include a complete statement of the attempts made to resolve the matter, including (1) steps taken to secure essential cost or pricing data, (2) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, and (3) any assurances offered, such as agreements to adequately safeguard information furnished.

(f) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and for gaining an advantage over competitors in negotiations for future acquisitions, it is important to know whether the offeror intends to absorb any portion of these costs or whether the offeror plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on acquisitions (including spare parts or other support items).

[51 FR 46146, Dec. 23, 1986, as amended at 54 FR 31038, July 26, 1989]

215.804-7 Defective cost or pricing data.

(b)(2) In the absence of evidence to the contrary, the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data were not used, or were not relied upon, the contract price should be reduced in that amount. In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(d) An auditor's advisory report of post-award reviews of cost and pricing data may result either from a specific request of a contracting officer or from audit action initiated independent of a contracting officer's request.

(e) In exercising the Government's rights in such cases, the contracting officer will consider the varying circumstances discussed below.

(e)(S-70) In some instances, the prime contractor may have reached agreement on price with a subcontractor before the prime contractor and the Government agree on a definitive price. This might occur, for example, if the prime contractor commenced performance under an unpriced action such as a letter contract. In such cases, the subcontractor's cost or pricing data must be submitted with the prime contractor's submission. If any such subcontractor data are subsequently found to be defective, the prime contract is subject to price adjustment in the same manner as would be the case if any other cost or pricing a submitted by the prime contracroved to be defective.

)(S-71) The Government and the ime contractor will normally agree on the price of a contract prior to final agreement on price between the prime contractor and his subcontractor. In such cases, the prime contract price will be based, in part, on subcontract cost estimates. The prime contractor will be expected to support the subcontract cost estimates with subcontractor cost or pricing data. The prime contract price will be subject to adjustment on the basis of defective subcontractor cost or pricing data submitted prior to agreement on the prime contract price if:

(i) Such subcontractor data were not accurate, complete, or current as of the date certified in the prime contractor's Certificate of Cost or Pricing Data, or in some cases were not accurate as submitted by the subcontractor, and

(ii) The prime contract price was increased by a significant sum because of such defective subcontractor data.

(f) Conditions may be prescribed by: the Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), DCBM, for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF (AF/RDC), for the Air Force; and the Executive Director, Contracting, for the Defense Logistics Agency.

(2) Although the action is taken under those price reduction clauses rather than under part 31 as a practical matter the result is the same, i.e., the increased costs will be disallowed under cost-type contracts or not considered as actual costs for final pricing of redeterminable or incentive-type contracts. The action is taken under the price reduction clauses because not only will the increased costs be disallowed or not considered as actual costs but also the fixed-fee or target profit included in the initial price may be subject to reduction in accordance with (1) and (2) of 215.804-7(e) above.

215.804-8 Contract clauses.

The requirement for inclusion of the specified clauses in contracts with foreign governments or agencies may be waived in exceptional cases by the Agency head (see FAR 15.804-3(i)). The contracting officer shall also include the clause at FAR 52.215-22 when obtaining partial cost or pricing data in accordance with 215.804-2(a)(2).

(S-70) The clause at 252.215-7000, Aggregate Pricing Adjustment, shall be included in all solicitations and contracts which include a clause at FAR 52.215-23, FAR 52.215-24, or at FAR 52.215-25. The Contracting Officer may insert a lesser dollar amount, if appropriate.

215.805 Proposal analysis.

215.805-1 General.

(b) See also 215.805-70 regarding use of cost realism analysis.

[54 FR 16116, Apr. 21, 1989]

215.805-2 Price analysis.

(b) To provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as time of prior acquisitions, specifications, quantities ordered, time for delivery, Government-furnished materials, and experienced trends of improvement in production efficiency. It must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior prices was established and unless changes in the general level of business and prices have been considered.

215.805-4 Technical analysis.

Technical analyses by the Plant Rep/ACO and the team members shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make-or-buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

215.805-5 Field pricing support.

(a)(1) Contracting officers shall request field pricing reports for contracts and modifications resulting from a proposal in excess of $500,000 for a fixed-price type contract and $1 million for a cost type contract. The requirement for subject reports may be waived, with adequate written justification by the contracting officer. However, if the contracting officer becomes aware that the cognizant administrative contracting officer has found a significant deficiency in the contractor's estimating system and has instructed the contractor to correct the deficiency, field pricing reports shall be requested for fixed-price proposals in excess of $250,000 and cost type proposals in excess of $500,000. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price is achieved. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontract items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates; overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours. It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply.

(2) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the contracting officer. To accomplish this end, the Plant Rep/ACO must:

(i) In concert with the auditor and in consideration of the auditor's workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the contracting officer and the contract auditor);

(ii) Identify areas for special consideration (these are areas in addition to those specified by the contracting officer);

(iii) Arrange for exchanges of technical and audit information; and

(iv) Be fully responsive to a request for technical information from the auditor.

(c)(1)(S-70) When field pricing reviews are required, contracting officers should note the following:

(A) The Plant Representative/Administrative Contracting Officer (Plant Rep/ACO) is the team manager for all contracting officer requests for field pricing support. The contracting officer shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Rep for the Services and the ACO for DCAS (DLA). An advance copy of the contracting officer's request shall also be sent to the cognizant audit activity. When only an audit report is requested by the contracting officer, the auditor shall treat the advance copy of the contracting officer's request as a signal to begin the audit work. When an audit is completed, the audit activity shall: (*1*) Send the original of the audit report to the Plant Rep/ACO, and (*2*) send an advance copy of the audit report to the contracting officer. To expedite the pricing review process, these requests shall be marked in bold letters on the mailing envelope "**FIELD PRICING REQUEST.**" On urgent requests, provide facsimile numbers in the requests to facilitate sending the complete report.

(B) When the contracting officer knows in advance that field pricing support will be required, the contracting officer shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. If the contracting officer requires the contractor to provide copies of the proposal directly to the Plant Rep/ACO and auditor, a field pricing request shall be issued along with the solicitation. In this event, the contracting officer shall include in the field pricing request, the approximate date the proposal will be provided by the contractor, and identify those specific areas for which field pricing support is required.

(C) Where audit reports are received on contracting actions that are subsequently canceled or unsuccessful, the cognizant auditor shall be notified in writing.

(c)(1)(S-71) When field pricing reports are requested for acquisition of parts or support equipment, the request shall as a minimum include, but will normally be limited to, the following:

(A) A detailed analysis of each line item where the quoted price exceeds 25 percent or more the lowest price of the Government of the item at any time within the most recent 12-month period. These items will be specified in the request for field pricing support.

(B) The results of a review of the description and the price of each line item in the proposal made to assist in identifying any obvious overpricing. Those items, so identified, will be subjected to further analysis.

(C) An analysis of the significant high-dollar-value items. If there are no obvious high-dollar-value items (i.e., the majority of line items are of approximate equal value), a random sampling technique should be used.

(D) An analysis of a random sample of the remaining low-dollar-value line items. Sample size may be determined by subjective judgment, e.g., experience with the contractor, reliability of contractor's estimating/accounting systems, credibility of proposals, etc.

(c)(1)(S-72) When field pricing reports are to be requested for spare parts proposals that have been identified as Spares Acquisition Integrated with Production (SAIP) items (see DoD Instruction 4245.12), the contracting officer shall—

(A) Include a copy of the data entitled "Contractor's Procurement Schedule for SAIP" (Data Item DI-V-7200), or equivalent, in the request so that the benefits of combining new and in-process quantities can be assured (this data is delivered by the contractor on contracts that include SAIP requirements); or

(B) Require the contractor to include this data in its proposal.

(d) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the contracting officer's final pricing decision. Therefore, it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render services within the individual area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information the auditor can often project trend data. The technical specialist may also analyze the proposed hours on the basis of knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(e) The terms "audit review" and "audit" refer to examinations by contract auditors of contractors' statements of actual or estimated costs to the extent deemed appropriate by the auditors in the light of their experience with contractors and relying upon their appraisals of the effectiveness of contractors' policies, procedures, controls, and practices. Such audit reviews or audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth, at the discretion of the auditor. The contract auditor is responsible for submission of information and advice, based on analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs.

(e)(6) Reports of technical analysis and review should be furnished to the auditor at the earliest possible date and at least five days prior to the due date of the audit report to enable the auditor to include the financial effect of technical findings in the audit report (for example, the necessary computations of dollar amounts arising from changes in proposed kinds and quantities of materials, labor hours, etc.). In the event the technical analyses are not available in time to be reflected in the audit report, the audit report shall so state, and this shall be made known to the Plant Rep/ACO so that comments may be incorporated in the submission to the contracting officer. If technical analyses are received later by the auditor, the auditor shall issue a supplemental report if the status of the negotiation is such that a report would serve a useful purpose. The original of all technical reports received by the auditor shall be made a part of the audit report submitted to the Plant Rep/ACO.

(e)(7) When the contracting officer determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, the contracting officer shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved.

(e)(8) During the course of the examination, the Plant Rep/ACO and the auditor shall each confer with the contractor to fully understand the basis for each item in the contractor's proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The Plant Rep/ACO (price analyst or negotiator) shall query the auditor or technical personnel about matters in audit or technical reports which appear to need clarification. When developing the Plant Rep/ACO statement to the contracting officer transmitting audit and technical reports, comments or observations shall be added about pertinent matters whether or not covered in the audit or technical reports. However, it is not contemplated, for example, that the price analyst or negotiator should attempt an examination of the contractor's accounting records for this purpose since the contract auditor has this responsibility.

[51 FR 46146, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987; 53 FR 38175, 38203, Sept. 29, 1988; 53 FR 20415, Dec. 15, 1988; 54 FR 31038, July 26, 1989]

215.805–70 Cost realism analysis.

(a) Even when adequate price competition exists, it may be appropriate to perform a cost realism analysis (see 215.801) to ensure that there is a reasonable expectation that the proposed costs are consistent with the technical proposal, especially for cost-reimbursement contracts. Cost realism analysis should also be used when the solicitation contains new requirements that may not be fully understood by competing contractors; when there are quality concerns; or when past experience has indicated that contractors have proposed costs which have resulted in quality or service shortfalls.

(b) Information necessary to perform a cost realism analysis should be determined during procurement planning and development of the solicitation based upon the circumstances of the particular procurement. There are instances where there may be information available from Government sources to perform a cost realism analysis; in other instances information will have to be obtained from the offerors. In the latter case, the contracting officer shall request only those data necessary to perform the cost realism analysis, not the submission or certification of cost or pricing data.

[54 FR 16117, Apr. 21, 1989]

215.806 Subcontract pricing considerations.

(S-70) Other subcontract pricing considerations include:

(1) Subcontract costs and pricing arrangements are significant elements to be considered during negotiation of prime contracts and during contract administration.

(2) Basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, for subcontract prices, and for subcontract performance. The contracting officer who is responsible for negotiating the contract price with the prime contractor must have adequate knowledge of these elements as they affect prime contract prices.

(3) Contractors' "make-or-buy" programs and proposed subcontracts must be reviewed in accordance with FAR 15.7 and with FAR Part 44. Information from these reviews should be used in evaluating subcontract costs when negotiating prime contract prices. The contracting officer, when appropriate, should secure from the contractor information concerning:

(i) The prime contractor's purchasing practices; and

(ii) The principal components to be subcontracted and the prospective or actual subcontractors, including (A) the extent of competition obtained or to be obtained, (B) the basis for the subcontract costs included in the contract pricing proposal (SF 1411), (C) any contractor cost or price analyses of subcontract proposals, including the cost or pricing data submitted by subcontractors, (D) the pricing arrangement contemplated or negotiated, and (E) the extent of subcontract supervision.

(4) The contracting officer is responsible for the reasonableness of the prime contract price which includes self-satisfaction as to the reasonableness of the subcontract costs included in the prime contract price. Field pricing support from the Plant Rep/ACO cognizant of the prime contractor is generally required in determining reasonableness of the prime contract price. In some instances, it may be necessary to obtain field pricing support of proposed subcontracts. On the basis of a request from the contracting officer and/or advice from members of the field pricing team, the ACO cognizant of the prime contractor may request field pricing support from the ACO cognizant of the prospective subcontractor. These actions will be taken in accordance with 215.805-5.

(5) If the prime contractor's analysis is not considered adequate, the ACO will return the analysis package to the contractor for re-accomplishment indicating areas of inadequacy. In this

case, the prime contractor will accomplish or cause the accomplishment of the additional review and resubmit the package to the ACO.

(6) When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, e.g., where realistic cost or pricing data on subcontract efforts are available. However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a statement substantially as follows:

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.

(List Subcontracts)

(7) In considering cost-plus-fee subcontracts, the contracting officer shall make every effort to insure that fees under such subcontracts never exceed the fee limitations identified in FAR 15.903(d).

(8) The prime contractor may submit subcontractor claims for exemption at any time to the contracting officer for an advance review of their acceptability, but otherwise the prime contractor shall submit them with its proposal or request for subcontract consent; or other action by the contracting officer, whichever comes first.

[51 FR 46146, Dec. 23, 1986, as amended at 54 FR 53616, Dec. 29, 1989]

215.806-3 Field pricing reports.

(a) If in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractor's cost estimates at the subcontractor's plants (after due consideration of reviews performed by the prime contractor), these reviews should be fully coordinated with the ACO having cognizance of the prime contractor before being initiated. The contracting officer's need to complete negotiations in a timely manner should be strongly considered before initiating additional reviews. If a review of a subcontractor's proposal is necessary, the ACO for the prime contractor shall forward the request to the ACO for the subcontractor with an informational copy to the auditor for the subcontractor. If a lower tier subcontract proposal requires review, the request should be coordinated in sequence with the ACO at the higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract ACO to the prime ACO with an information copy to the prime auditor. An information copy should also be provided to the prime contractor unless the report contains information the audited party does not want disclosed.

(b) The appropriate contract administration activities will be notified by the PCO when review and evaluation of subcontractor's proposals will require extensive field pricing assistance in connection with acquisition of a major weapon system, or require special or expected action by field pricing personnel and such action is being or has been delayed.

[54 FR 31038, July 26, 1989]

215.807 Prenegotiation objectives.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, will be documented and reviewed in accordance with Departmental procedures. The contracting officer shall consider data resulting from the application of work measurement systems in the development of pricing objectives and negotiations.

[53 FR 38237, Sept. 29, 1988, as amended at 54 FR 11724, Mar. 22, 1989]

215.808 Price negotiation memorandum.

(a)(4) Comments should also be included on the current status of their contractor systems (e.g., estimating, accounting, compensation, etc.) to the extent that they impacted and were considered in the negotiation.

(a)(9) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(a)(10) The following applies to documentation of profit or fee negotiated:

(i) Since the profit objective is the contracting officer's prenegotiation evaluation of the total estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(ii) When the weighted guidelines method is not used because of unusual pricing situations (see 215.9), the contract file shall be documented to support the exceptions.

(iii) DD Form 1547 (see 215.9) may be used in the Price Negotiation Memorandum, *Provided* that the rationale used in assigning the various rates is fully documented.

(iv) See also FAR 15.807(c).

[51 FR 46146, Dec. 23, 1986, as amended 53 FR 38237, Sept. 29, 1988]

215.809 Forward pricing rate agreements.

(e) Indirect costs commonly known as overhead are defined and described in FAR 31.203. Criteria for treatment and application of indirect costs to contracts are also set forth in FAR 31.203. To assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited indirect cost data or negotiated indirect cost rates, when available, in connection with negotiation of contracts and shall not, unless authorized by the head of the contracting activity, seek preferential indirect cost rates. If there is any question with respect to audited indirect cost data or negotiated indirect cost rates, or if such are not available, the negotiator should normally use the advisory services of the cognizant Department of Defense auditor.

(e)(2) In assessing changed conditions, the ACO will consider:

(i) The type of contract contemplated;

(ii) whether the dollar amount of the proposed contract action would significantly change the rates in the agreement;

(iii) whether the performance period of the proposed contract action is significantly different from the period to which the rate agreement applies; and

(iv) any new data or other information that may raise a question as to the acceptability of the rates.

(f) When contracting representatives have received notice that changed conditions negate FPRA's, individual contracting actions should not be delayed.

215.810 Should-cost analysis.

(b)(S-70)(i) Should-cost analyses shall be performed prior to award of definitive major systems contracts in excess of $100 million for major systems if each of the following conditions are met:

(A) A production contract for the system is to be awarded on a sole-source basis;

(B) Initial production of the system has already taken place;

(C) The current plans for the Department of Defense include production of substantial quantities of identical or similar items;

(D) The work to be performed under the contract is sufficiently defined to permit an effective analysis of what production of the system by the contractor should cost; and

(E) Major changes in the program are unlikely.

(ii) After an initial should-cost analysis has been performed under (i) above, subsequent should cost analyses need not be performed annually, but must be accomplished at least every four years on contracts meeting the requirements of (i) above.

(iii) Waiver of a should-cost analysis shall be made in accordance with Service procedures, but in no event at a level lower than a general/flag officer or civilian equivalent.

(e) The content of the should-cost analysis team report shall be prescribed by Service procedure. Team leaders should ensure that activities are coordinated to avoid duplication of effort.

215.811 Estimating systems.

The coverage in sections 215.811-70 through 215.811-79 below and the clause at 252.215-7003 provides, for the convenience of DoD activities, a consistent but more detailed and comprehensive treatment of estimating system policies and procedures than FAR 15.811.

[53 FR 8907, Mar. 18, 1988]

215.811-70 Definitions.

Contractor, for purposes of this section, means a business unit as defined in FAR 31.001.

Estimating System is a term used to describe a contractor's policies, procedures and practices for generating cost estimates which forecast costs based on information that is available at the time. It includes the organizational structure; established lines of authority, duties, and responsibilities; internal controls and managerial reviews; flow of work, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and analyses used by a contractor to generate estimates of costs and other data included in proposals submitted in the expectation of receiving contract awards.

Significant Estimating System Deficiency means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for either total cost or a major cost element which is not an acceptable basis for negotiation of fair and reasonable prices.

[53 FR 8907, Mar. 18, 1988, as amended at 54 FR 30740, July 24, 1989]

215.811-71 Policy.

It is the policy of the DoD that all contractors have estimating systems that consistently produce well supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices. An estimating system should be consistent with and integrated with the contractor's related management systems, and should be subject to applicable financial control systems.

[53 FR 8907, Mar. 18, 1988]

215.811-72 Applicability.

(a) The specific requirements of sections 215.811-75 to 215.811-78 and paragraphs (d) and (e) of the clause at 252.215-7003, Cost Estimating System Requirements, apply to any large business contractor which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $50 million or more for which certified cost or pricing data were required.

(b) For a large business contractor not meeting the criteria in paragraph (a) of this section but which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $10

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million or more for which certified cost or pricing data were required, the PCO may require disclosure and review in accordance with subsections 215.811-75 to 215.811-78 and in compliance with paragraphs (d) and (e) of the clause at 252.215-7003 with the concurrence or at the request of the ACO when such compliance is in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly to the Government).

(c) The disclosure, maintenance and review requirements of sections 215.811-75 to 215.811-78 do not apply to small businesses or to educational institutions or other nonprofit organizations.

[53 FR 8907, Mar. 18, 1988, as amended at 54 FR 11724, Mar. 22, 1988]

215.811-73 Responsibilities.

(a) For a contractor meeting the requirements in 215.811-72(a) or (b) above, the cognizant ACO shall determine the adequacy of the contractor's estimating system and pursue appropriate corrections of deficiencies.

(b) On behalf of the ACO, the cognizant auditor is responsible for being the team leader in conducting estimating system reviews.

[53 FR 8908, Mar. 18, 1988]

215.811-74 Contractor estimating system standard.

To be considered adequate, a contractor's estimating system must be established, maintained, reliable, consistently applied, and must produce verifiable, supportable and documented cost estimates.

[53 FR 8908, Mar. 18, 1988]

215.811-75 System disclosure and maintenance requirements.

(a) An estimating system disclosure is adequate when the contractor has provided the cognizant ACO with documentation that:

(1) Accurately describes those policies, procedures and practices that the contractor currently uses in preparing cost proposals; and

(2) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's estimating practices.

(b) Significant changes to the cost estimating system must be disclosed to the cognizant ACO on a timely basis.

(c) If the contractor notifies the ACO and the auditor that disclosed information relative to its estimating system contains commercial or financial information which it regards as privileged and confidential, such information will be protected and will not be released outside the Government without the permission of the contractor. The contractor should place an appropriate legend on the face of the disclosed document at the time of submission.

[53 FR 8908, Mar. 18, 1988]

215.811-76 Characteristics of an adequate estimating system.

(a) *General.* The adequacy of an estimating system is dependent on the successful interrelationship of many variables. The relative importance or necessity of each is determined largely by the particular conditions applicable to an individual contractor. In general, adequate systems should provide for the use of appropriate source data, utilize sound estimating techniques and appropriate judgment, maintain a consistent approach, and adhere to established policies and procedures. Although it is not possible to list all of the characteristics of an adequate estimating system, there are some characteristics that should be present in most systems. Listed in paragraph (b) of this section are examples of the types of characteristics which should be considered by the ACO when evaluating a contractor's estimating system. They are not, however, intended as a checklist.

(b) *Evaluation.* In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system—

(1) Establishes clear responsibility for preparation, review and approval of cost estimates;

(2) Provides a written description of the organization and duties of the personnel responsible for preparing, re-

viewing, and approving cost estimates, and the various functions that contribute to the estimating process such as accounting, planning, etc.;

(3) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(4) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(5) Provides for appropriate supervision throughout the estimating process;

(6) Provides for consistent application of estimating techniques;

(7) Provides for detection and timely correction of errors;

(8) Protects against cost duplication and omissions;

(9) Provides for the use of historical experience, including historical vendor pricing information where appropriate;

(10) Requires use of appropriate analytical methods;

(11) Integrates information available from other management systems as appropriate;

(12) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;

(13) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(14) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(15) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

[53 FR 8908, Mar. 18, 1988, as amended at 54 FR 20592, May 12, 1989]

215.811-77 Indicators of potentially significant estimating deficiencies.

Some indicators of conditions that may produce or lead to significant estimating deficiencies are listed below. These indicators are not intended as a comprehensive checklist. They may, however, suggest the need for further analysis or evaluation. Since estimating is not an exact science and is partly based on judgment, differences between individual estimates and subsequent actual data are not necessarily indications of a system deficiency.

(a) Failure to assure that relevant historical experience is available to and utilized by cost estimators as appropriate.

(b) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required.

(c) Consistent absence of analytical support for significant proposed cost amounts.

(d) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available.

(e) Recurring significant defective pricing findings within the same cost element(s).

(f) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired.

(g) Failure to provide established policies, procedures and practices to persons responsible for preparing and supporting estimates.

[53 FR 8908, Mar. 18, 1988]

215.811-78 Procedures.

(a) *System reviews.* Cognizant audit and contract administration activities will establish and manage regular programs for reviewing selected contractors' estimating systems. Reviews and reports shall be accomplished as a contract audit and contract administration office team effort, with the contract auditor designated as team leader. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to ensure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program. The ACO or a representative should coordinate the contract administration activity's review, consolidate findings and recommendations, and, when appropriate, prepare a comprehensive written report which shall be submitted to the auditor. The contract administration activity's written report shall be attached to the estimating survey team report. A system review shall be conducted at least every three years of a contractor required to make disclosure pursuant to 215.811-72 and paragraphs (d) and (e) of the clause at 252.215.7003, Cost Estimating System Requirements, except where the auditor, in coordination with the ACO, determines that past experience and a current vulnerability assessment of the pricing activity of a contractor discloses low risk. If the auditor and the ACO determine that the Government is subject to high risk, estimating system reviews should be done more frequently. To the extent possible, the team leader should inform the contractor and the ACO of significant findings during the conduct of the review. The team leader should apprise the contractor during an exit conference of any significant findings.

(b) *Disposition of survey team findings*—(1) *Reporing of survey team findings.* The auditor will document the results of the system review in a report to the ACO. The report shall address the survey team findings and recommendations. If there are significant estimating deficiencies, the report shall recommend disapproval of all or a portion(s) of the estimating system.

(2) *Field pricing reports.* When the report of a system review indicates that there may be a significant estimating system deficiency, the effect of such deficiency shall be mentioned in the field pricing report for each contractor proposal reviewed until resolution of such deficiency.

(3) *Contracting officer responsibility.* The contracting officer responsible for negotiation of a specific proposal generated by an estimating system with an identified deficiency shall evaluate such proposal in light of the system deficiency. If the contracting officer determines that the deficiency does not have a significant impact on the instant negotiation, then he or she should proceed with the instant negotiations. If the contracting officer determines that the system deficiency does affect the proposal and does have a significant impact on the instant negotiation, then the contracting officer should consider pursuing such alternatives as:

(i) Allowing additional time for the contractor to correct the deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost element(s) affected by the system's deficiency, e.g., what should the element(s) cost (See the Armed Services Pricing Manual (ASPM) for appropriate analytical techniques.);

(iv) Segregating the questionable areas as a cost reimbursable line;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract clause that provides for adjustment of the contract amount after award (reopener clause). The contracting officer who incorporated the clause into the contract shall be responsible for negotiating price adjustments required by the clause. A reopener clause necessitated by an estimating deficiency should clearly identify the amount(s) and item(s) which are in question at the time of negotiation. It should also indicate either a specific time or subsequent event by which the contractor will submit a proposal identifying the cost impact adjustment necessitated by the deficient estimating system. The clause should require that the contractor certify cost and pricing data submitted as part of the supplemental proposal, and that, should the contractor fail to submit such a proposal, the contracting officer will make a unilateral price adjustment. Failure of the contractor and the Government to agree to the adjustment shall be a dispute under the Disputes clause.

(4) *Initial notification of contractor.* Upon receipt of the system review report, the ACO shall provide a copy to the contractor and allow 30 days or a reasonable extension thereto for

submission of its written response. If no significant deficiencies are identified, the ACO will notify the contractor in writing in a timely manner.

(i) *Contractor agreement.* If the contractor agrees with the report findings and recommendations, the contractor should, within 60 days of receipt of the initial notification, correct any identified system deficiencies or submit a corrective action plan showing milestones and actions leading to elimination of the deficiencies.

(ii) *Contractor disagreement.* If the contractor disagrees with the report findings and recommendations, the contractor's response should contain the rationale for each area of disagreement.

(5) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response and determine whether—

(i) The estimating system contains deficiencies which need correction;

(ii) Any such deficiencies are significant estimating deficiencies which would result in disapproval of all or a portion(s) of the contractor's estimating system; or

(iii) Any proposed corrective action(s) are adequate to correct the deficiency.

(6) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of his/her determination and, if appropriate, of the Government's intent to disapprove all or a selected portion(s) of the system. The notice shall list the cost elements it covers and identify any deficiencies requiring correction. The notice shall also require the contractor to make correction or submit a corrective action plan within 45 days showing proposed milestones and actions related to all identified deficiencies.

(7) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress toward correction of deficiencies. In the event the contractor fails to make adequate progress toward corrective action, the ACO shall take whatever action is determined necessary to ensure that the contractor corrects the deficiency. Actions which should be considered by the ACO include but are not limited to bringing the issue to the attention of higher level management, reducing or suspending progress payments in accordance with FAR 32.503-6 and/or recommending nonaward of potential contracts.

(8) *Notice of disapproval.* (i) If, within 45 days after receipt of the notice of deficiency (see paragraph (b)(6) of this section) or a reasonable extension thereto, the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies, all or a selected portion(s) of the contractor's estimating system shall be disapproved in writing. The notice of disapproval shall identify the cost element(s) covered by the disapproval and list the deficiencies which prompted the disapproval for each affected cost element.

(ii) A copy of the Notice of Disapproval shall be sent to the cognizant auditor and to each contracting office and contract administration office having substantial business with the contractor.

(9) *Withdrawal of estimating system dissapproval.* After the ACO determines that the contractor has corrected the significant system deficiencies, the ACO shall notify the contractor the auditor, and all affected contracting activities that the disapproval has been withdrawn.

[53 FR 8909, Mar. 18, 1988, as amended at 53 FR 46457, Nov. 17, 1988]

215.811-79 Contract clause.

The contracting officer shall insert the clause at 252.215-7003 in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

[53 FR 8910, Mar. 18, 1988]

215.870 Procedures for identifying contractors' unallowable costs.

(a) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and FAR Part 31 will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(1) A greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(2) They expedite the negotiation process; and

(3) They may reduce the scope of reviews performed by audit and other technical and contracting personnel.

(b) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, contracting officers having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(1) Assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(2) Identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(3) Identification and computation of directly associated costs;

(4) Assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;

(5) Coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and

(6) Assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(c) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel.

215.871 Estimated data prices (DD Form 1423).

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items;

(5) Differences in data preparation methods among offerors.

For these and other reasons, data price estimates should not be used for contract pricing purposes without further analysis.

(c) The contracting officer shall assure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes any certification required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

[51 FR 46146, Dec. 23, 1986, as amended at 55 FR 30157, July 24, 1990]

215.872 Capital investment incentives.

(a) *Policy.* Although DoD profit and competition policies are intended to provide adequate incentives to the contractor for capital investment and productivity, it is also recognized that individual cases will arise when additional incentives may be appropriate. In these individual cases, it is the policy of DoD that industrial modernization incentives may be negotiated and included in contracts for research, development, and/or production of weapons systems, major components, or material. The purpose is to motivate the contractor to invest in facilities modernization and to undertake related productivity improvement efforts it would not have otherwise undertaken or to invest earlier than it otherwise would have done.

(b) *General.* Any industrial modernization incentives program (IMIP) shall be accomplished in accordance with this coverage and with DoD Directive 5000.44 and DoD Guide 5000.44-G. Sufficient flexibility is provided in the directive and guide to allow the IMIP to be tailored to the requirements of an individual situation. The incentives may be in the form of productivity savings, rewards, contractor investment protection, and/or other appropriate forms. They may be used separately or in combination, as addressed in subparagraphs (b)(1), (b)(2) and (b)(3) of this subsection. However, in no event, shall an IMIP agreement be made between DoD and a contractor until careful analyses have been conducted and reduced acquisition costs or equivalent benefits (such as improved quality, as a result of the application of the IMIP) are clearly evident. It may be generally desirable to initially negotiate a memorandum of understanding (MOU) to establish guidelines and criteria against which to anlayze and negotiate a specific IMIP.

(1) *Productivity Savings Reward (PSR).* This incentive shares the savings achieved from facilities modernization and related productivity improvement efforts. This incentive may be used to encourage productivity improvements in all facets of the production process including major cost driving areas such as labor, materials, overherad, support systems (including software), and organizations. In order for these to be considered viable projects that are beneficial for both the Government and the contractor, the contractor must show that PSR is required for project implementation and that these projects are over and above requirements to meet normal contractual obligations. The scope and limitation of productivity savings rewards are as follows:

(i) Productivity savings rewards in conjunction with contractor capital investment will be based on an internal rate of return (IRR) analysis. The productivity savings rewards should be sufficient to allow the contractor to obtain an equitable return on the investment. Nonseverable plant equipment and property may be included on a limited basis as part of the contractor's investment basis for calculating the appropriate return on investment. The effect of any Government funding provided in conjunction with modernization efforts must be included in the contractor's IRR, and no contractor costs or expenses otherwise allocable and allowable to any specific DoD contract may be included.

(ii) Productivity savings rewards providing the contractor a reward for productivity improvements other than through capital investment will be based on an economic analysis of the benefits to the Government and the contractor. The negotiated sharing amount or percentage shall be based on benefits and risks to both parties. It will be paid only for savings that are validated, and will be negotiated for a period normally no longer than five years after the date of implementation.

(iii) Productivity savings rewards shall not constitute fee within the meaning of the limitations imposed by 10 U.S.C. 2306(d).

(2) *Contractor Investment Protection.* If formally agreed to by the parties, this incentive would become operative in the event that the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision was based. This incentive may permit the Government to acquire specific capital investments at no more than the undepreciated value. This value may be determined by considering a combination of investment incentives, income tax credits or incentives, and allowable de-

preciation costs pursuant to cost principles established in FAR part 31. The scope and limitations are as follows:

(i) This technique is designed to transfer to the Government some of the risk associated with acquisition of certain capital assets by contractors. Its purpose is to cover only specifically identified cost-effective capital assets. It is not to be used to override the general policy that all facilities needed for the performance of Government contracts will be provided by the contractor as set forth in FAR part 45.

(ii) This investment incentive is designed primarily for the situation when one program dominates the business base and the contractor may bear unacceptable monetary risk from the modernization effort. The program must provide for a sufficient buy to allow for amortization of the planned investment.

(iii) Capital assets which may be covered by such an investment incentive include only severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000, including associated accessories which would be capitalized in accordance with the contractor's disclosed accounting practices, but excluding real property.

(iv) The exact value and nomenclature of each piece of capital equipment must be included in the contract documents.

(v) The fiscal authority who commits funds to the resultant contract must certify that the approval authority has approved by fiscal year the amount of contingent Government liability and that the approval authority has notified the Congress in advance that the technique will be used on contracts for a specific weapon system or material program element. Unless there are unusual circumstances, this notification will be included in the justification material submitted to the Congress in support of authorization and appropriation requests. A copy of the notification shall be retained in the contract file.

(vi) Approval for use of this investment incentive must be obtained from the Secretary of the Military Departments or the Director of DLA. Authority up to $50 million may be delegated no lower than the Commander, AFSC, AFLC, or AMC.

(vii) In the event that it becomes apparent that the contingent liability resulting from the use of this technique will become an actual obligation, the approval authority shall be notified and immediate steps shall be taken to obtain sufficient funds to cover the obligation.

(3) *Other Appropriate Incentives.* Other incentives such as award fees and direct Government funding, based on IMIP methodologies, may be provided under IMIP when appropriate.

(c) *Contracting Officer Evaluation.* The contracting officer must evaluate the proposed IMIP agreement to determine that benefits to the U.S. Government can be expected. A contractor statement that the investments or actions would not be undertaken without, or will be accelerated with, the use of the incentive may be required. The evaluation should include the following elements:

(1) A cost/benefit analysis of the investment or action and the overall cost savings or other benefits to the Government, including the payback quantities and payback periods and how the savings will be reflected in the pricing of individual contracts.

(2) An analysis of the contractor's past investments and capital investment profiles, and the relationship of specific projects to the contractor's factory analysis.

(3) Other considerations such as:

(i) Interaction with other incentives provided on the contract.

(ii) Effects of variations in procurement quantities on the incentives.

(iii) How the incentive techniques are integrated with the overall acquisition strategy, including items such as second sourcing plans and multiyear procurement.

(iv) Effects on overhead and indirect costs.

(d) *Negotiation.* (1) The Government objective should be to provide only those incentives sufficient to motivate the contractor to implement the desired investment or action. Ceiling should normally be provided to establish a maximum incentive amount.

(2) Emphasis should be placed on flowing down requirements or involve-

ment to subcontractors and vendors where appropriate.

(3) Provisions should be provided establishing the extent to which the contractor may use equipment for commercial purposes. This should be reflected in the amount of incentive provided.

(4) The extent of disclosure or dissemination of technologies or processes contained in the IMIP are subject to negotiation and agreement.

(e) *Contractual Requirements.* (1) Specific contract requirements should be structured to match the circumstances of the individual acquisition.

(2) Measurement and verification requirements should be addressed contractually, and systems established that match the incentives used and the needs in this area. Contractors should be required to develop, maintain, and provide data supporting any measurement of savings achieved until three years after final payment under the contract.

(f) *Contract Clause.* The contracting officer shall include the clause at 252.215-7001, "IMIP Productivity Savings Reward", in all solicitations and contracts for which certified cost or pricing data were obtained involving the acquisition of supplies (i.e., weapon systems, equipment, and material) expected to result in contracts or contract modifications greater than $1 million. The clause is discretionary for inclusion in solicitations less than $1 million. Inclusion of the clause does not in itself result in the payment of any productivity savings reward amounts to the contractor—the clause becomes operable only when an IMIP business agreement has been executed establishing all the terms and conditions for payment of the productivity savings rewards.

[52 FR 26346, July 14, 1987]

215.873 Production Special Tooling and Production Special Test Equipment (PST/PSTE).

(a) *General.* (1) Pursuant to 10 U.S.C. 2329, when a contractor, in order to perform a production contract, is required to acquire or fabricate production special tooling (PST) and production special test equipment (PSTE) at a total cost to a contractor of $1 million or more, the contracting officer shall comply with the procedures in paragraph (c) below, unless one of the exceptions in paragraph (d) below applies.

(2) When a contractor, in order to perform a production contract, is required to acquire or fabricate PST and PSTE at a total cost to the contractor of less than $1 million, the instant contract will generally provide for full payment.

(b) *Definitions.* (1) "Production special tooling" and "production special test equipment", as used in this subpart, are those subsets of "special tooling" and "special test equipment" (as defined in FAR 45.101) that support production rates and quantities.

(2) "Maximum amount", as used in this subpart, means the total amount to be paid to the contractor on the instant and any future contracts as a direct cost for the PST and PSTE to be acquired or fabricated to perform the instant contract as negotiated with the contractor. The total amount can be a specific dollar amount or dollar ceiling

(c) *Procedures.* (1) When the criteria specified in paragraph (a) above apply, the contract shall include a special provision negotiated between the contractor and the Government, which specifies, as a minimum, the following:

(i) A listing of, or reference to a listing of, the PST and PSTE which the contractor will acquire or fabricate to perform the contract;

(ii) The maximum amount the contractor may be paid on the instant and future contracts for the PST and PSTE;

(iii) The amount to be paid to the contractor on the instant contract for the PST and PSTE being acquired or fabricated;

(iv) An amortization schedule for the payment, subject to availability of funds, of the balance of the amount specified in paragraph (c)(1)(ii) above;

(v) That, in the event the contract or program is terminated before the maximum amount specified for the PST and PSTE has been paid, for reasons other than the contractor's failure to perform, the contractor shall be paid the balance of the maximum amount, or the actual direct costs incurred, whichever is less, subject to the availability of funds;

(vi) That costs incurred by the contractor for the acquisition and fabrication of the PST and PSTE shall be treated as direct changes under the instant and future contracts. If the instant contract does not provide for payment of the maximum amount in paragraph (c)(1)(ii) above, the balance of these costs shall not be shifted, assigned to other programs, or charged to indirect cost pools;

(vii) The respective parties' rights to title.

(2) Where it is anticipated that future contracts will be awarded to the same contractor for the same or similar items for which the contractor will be able to use the PST and PSTE, the instant contract will provide for payment of at least 50 percent of the maximum amount specified for the PST and PSTE, except when the Head of the Agency determines, in advance of contract award, that the use of a percentage less than 50 percent is in the best interests of the Government and the use of that lower percentage will not cause an undue financial burden on the contractor.

(3) Whenever it is anticipated that no future contracts will be awarded as provided in paragraph (c)(2) above, the instant contract will provide for full payment of the maximum amount specified for the PST and PSTE.

(4) When a contract does not provide for payment of the maximum amount specified for the PST and PSTE under the instant contract and an amortization schedule is established in accordance with paragraph (c)(1)(iv) above, the contracting officer shall make the following adjustments for calculating profit objectives and facilities capital cost of money on the instant and future contracts:

(i) The contracting officer shall separately calculate a cost of money amount for the unamortized portion of PST and PSTE costs by multiplying the unamortized portion of the PST and PSTE costs by the current cost of money rate by the period of time (years or portions thereof) until the next contract is awarded for which charges for the PST and PSTE will be reimbursed. This cost of money amount computed above shall be included in the price of the instant contract. When the weighted guidelines method is used, this amount shall not be included on the DD Form 1861, but will be added to Line 32 of the DD Form 1547.

(ii) When establishing a profit objective using DFARS Subpart 215.9, only those PST and PSTE costs being priced for payment under the instant contract action will be profit-bearing on that contract. These costs shall be included as part of the cost base for performance risk and contract type risk (including working capital adjustment). The unamortized balance of the PST and PSTE costs shall not be profit-bearing on the instant contract, nor shall they be included in the facilities capital employed base.

(iii) For future contract actions on which the unamortized balance of the PST and PSTE costs (or portions thereof) will be paid thereunder, cost of money and profit shall be calculated in accordance with the procedures of paragraphs (c)(4) (i) and (ii) above.

(d) *Exceptions.* The procedures set forth in paragraph (c) above do not apply to contracts:

(1) Where the PST and PSTE will be used by the contractor solely for final production acceptance testing;

(2) Awarded as a result of sealed bidding procedures contained in FAR Part 14;

(3) Where prices are, or are based on, established catalog or established market prices of commercial items sold in substantial quantities to the general public; or

(4) Where price is set by law or regulation.

[53 FR 46457, Nov. 17, 1988]

215.874 Follow-up on contract audit reports.

It is policy of the Department of Defense for contracting officers to make the best possible use of contract audit advice. The DoD policy on contract audit follow-up is contained in Department of Defense Directive 7640.2, "Policy for Follow-Up on Contract Audit Reports."

[52 FR 34788, Sept. 15, 1987]

§ 215.875 Availability of contractor records.

In accordance with 10 U.S.C. 2406, the contracting officer shall include the clause at 252.215-7001, "Availability of Contractor Records", in solicitations and contracts which—

(a) Require the submission and certification of cost or pricing data; and

(b) Are for the manufacture of end items for a major defense acquisition program, as defined in 10 U.S.C. 2432a.

[52 FR 11277, Apr. 8, 1987, 52 FR 13447, Apr. 23, 1987 and 53 FR 38175, Sept. 29, 1988]

215.876 Work measurement systems.

(a) *Definition.* "Work measurement systems (WMS)", as used in this section, means systems used to analyze the touch labor content of a manufacturing operation, establish labor standards for that operation, and measure and analyze variances from those standards. The purpose of WMS is to continuously improve both the manufacturing operation and the labor standards used in that operation.

(b) *Policy.* It is the policy of the Department of Defense to use WMS, when appropriate, to provide data for use in planning, cost estimating, and monitoring contract performance. The contracting officer, in coordination with the Program Manager, shall include provisions in the contract to implement the program's work measurement system requirements. An example of an acceptable set of criteria for WMS is found in MIL-STD-1567A. Either MIL-STD-1567A or the contractor's WMS, if acceptable to the Government, should be appropriately tailored for the specific program or contract.

(c) *Applicability.* Except as provided below, solicitations and resulting production contracts for major weapons systems or subsystems in excess of $20 million annually or a total cost of $100 million normally should contain provisions for WMS, appropriately tailored to be both consistent with program requirements and compatible with existing contractor technical and management processes and procedures, such as the principle of continuous improvement of the total quality management process. WMS requirements may also be included in Full Scale Development (FSD) contracts exceeding $100 million when appropriate (e.g., to assist in transitioning from FSD to production). Work measurement systems should not be required when:

(1) Procuring commercial products (see FAR 11.001);

(2) There will be low volume, nonrepetitive production runs;

(3) The submission and certification of cost or pricing data is not required; or

(4) There will not be a cost benefit from the imposition of these systems. This decision will be documented and approved in accordance with agency procedures.

[54 FR 11724, Mar. 22, 1989]

Subpart 215.9—Profit

SOURCE: 52 FR 28708, Aug. 3, 1987, unless otherwise noted.

215.900 Scope of subpart.

This subpart prescribes additional policies and procedures which DoD contracting officers shall use in developing a prenegotiation profit or fee objective (hereafter collectively called "profit objective") on negotiated defense contracts.

215.902 Policy.

(a)(1)(i) The Weighted Guidelines Method described in 215.970 is DoD's structured approach for performing a profit analysis on contract actions where price is to be negotiated. Its purpose is to provide a uniform and consistent manner for rewarding risk, motivating efficient and quality performance, and stimulating capital investment in the defense industrial base. The contracting officer shall use the Weighted Guidelines Method, or an alternate structured approach as authorized in 215.902(a)(1)(ii), for any negotiated contract action that requires cost analysis (FAR 15.805-3). A profit analysis shall not be performed on contract actions to be awarded on the basis of adequate price competition (FAR 15.804-3(b)). Furthermore, practices which produce an arbitrary profit objective or accomplish a profit analysis on an after-the-fact basis are unacceptable.

(ii) The contracting officer may use an alternate structured approach, described in 215.971, in lieu of the Weighted Guidelines Method for the types of contract actions listed immediately below. The alternate structured approach must specifically address performance risk, contract type risk (including contractor working capital), and contractor facilities capital.

(A) Contract actions under $500,000;

(B) Architect-engineer contracts;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements; and

(F) Cost-plus-award-fee cotracts.

(iii) Although it is intended that the Weighted Guidelines Method be applied to most negotiated contract actions, there may be unusual situations where this method may not produce a reasonable overall profit objective. An alternate structured approach may be used by the contracting officer, provided that approval has been obtained in writing from the head of the contracting activity. This approval authority may be redelegated in accordance with Departmental procedures.

(iv) The contracting officer shall use the modified Weighted Guidelines Method for contract actions with nonprofit organizations (see 215.972).

(S-70) If the contract action involves a modification to an existing contract, the contracting officer may apply the profit rate in the existing contract to the modification if all of the following conditions are met:

(1) Modification is a relatively small dollar amount;

(2) Work to be performed under the modification is similar to that required in the existing contract; and

(3) Other relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(S-71) The Weighted Guidelines Method shall be used to establish a basic profit rate under a formula type pricing agreement, and this basic rate may be used on all contract actions issued under that agreement, provided that conditions affecting profit do not change materially.

(S-72) The prime contractor should be encouraged to use the Weighted Guidelines Method or a similar structured approach in developing profit objectives for negotiated subcontracts.

[52 FR 28708, Aug. 3, 1987; 52 FR 36419, Sept. 29, 1987]

215.903 Contracting officer responsibilities.

(b) The Weighted Guidelines Method of profit analysis shall not be used in instances where cost analysis is being performed to assess cost realism on competitive acquisitions.

(e) The contractor should be encouraged to present the details of proposed profit amounts in the format described in 215.970, if application of the Weighted Guidelines Method is anticipated. This will facilitate a more complete discussion of the individual factors which will determine the overall profit objective. Specific agreement on the applied weights or values for individual profit factors shall not be attempted.

(S-70) The contracting officer's price negotiation memorandum shall fully document the profit analysis performed, whether it be accomplished through the Weighted Guidelines Method or an alternate structured approach.

(S-71) The contracting officer is responsible for the accuracy and timeliness of profit reporting under DoD's management information system (see 204.673). Such reporting should be accomplished within 30 calendar days after the date of contract award. The contracting officer is responsible for the correction of any errors detected by the system's auditing processes.

215.905 Profit-analysis factors.

215.905-1 Common factors.

It is not necessary for the contracting officer to give consideration to the common factors beyond the means included in the Weighted Guidelines Method and alternate structured approaches.

215.970 Weighted Guidelines Method.

The Weighted Guidelines Method requires application of a DD Form 1547, "Record of Weighted Guidelines Method Application" (see 253.303-70-DD-1547). This method is DoD's structured approach for (a) performing the profit analysis necessary to develop a prenegotiation objective, (b) summarizing profit amounts subsequently negotiated as part of the contract price, and (c) serving as the principal source document for reporting profit statistics through DoD's management information system. The Weighted Guidelines Method expressly takes into account the contractor's degree of performance risk in producing the goods or services being acquired, the contract type risk assumed by the contractor under varied contract and incentive arrangements, and the nature and extent of facilities capital to be employed by the contractor. A normal value and designated range have been established for each profit factor. The normal value is the expected profit assignment where average conditions exist when compared to all goods and services acquired by DoD. The contracting officer may assign any value within the designated range if conditions warrant.

215.970-1 Procedures for establishing a profit objective.

(a) *Performance Risk*. This profit factor addresses the contractor's risk in fulfilling the contractual requirements to provide the supplies or to perform the services being acquired.

(1) *Profit base*. The profit amount for performance risk is computed by multiplying a composite profit value assigned by the contracting officer times total contract costs, *excluding* general and administrative (G&A) expenses, contractor independent research and development/bid and proposal (IR&D/B&P) expenses, and facilities capital cost of money.

(2) *Normal values and designated ranges*—(*i*) *Standard*. Except for limited cases as provided in 215.970-1(a)(2)(ii), the normal value and designated range for the performance risk profit factor are as shown below. It is expected that the standard will be used on most contracts.

	Normal value	Designated range
Performance Risk (Standard)	4%	2% to 6%

(ii) *Alternate*. It is DoD's intent to base a substantive portion of total profit on contractor investment in facilities capital. However, some research and development and service contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. For such contractors, the contracting officer may use the alternate normal value and designated range shown below. If the alternate is used, the contractor may not be given any profit for facilities capital employed (215.970-1(c)).

	Normal value (percent)	Designated range (percent)
Performance Risk (Alternate)	6	4 to 8

(3) *Evaluation criteria*. Performance risk shall be evaluated using three criteria: technical, management and cost control. Each is an integral part of developing the composite profit value for performance risk. The contracting officer shall weight each criterion as judged appropriate for the supplies or services being acquired. The profit value assigned will vary according to the contractor's performance risk in providing the supplies or services required by the contract. While any value may be assigned within the designated range, it is expected that the maximum and minimum values will be restricted to cases where performance risk is substantially above or below normal. The following example demonstrates how a composite profit value for performance risk is calculated.

	Weight assigned (percent)	Value assigned (percent)	Weighted value (percent)
Technical	30	5.0	1.5
Management	30	4.0	1.2
Cost Control	40	4.5	1.8
Composite Value			4.5

(i) *Technical.* This criterion focuses on the technical risk associated with providing the goods and services being acquired. The contracting officer's evaluation should address such factors as the technology being applied or developed by the contractor, technical complexity, program maturity, performance specifications and tolerances, and delivery schedule. The contracting officer is expected to carefully review the contract requirements and focus on the critical performance elements in the statement of work or specifications. The extent of a warranty or guarantee coverage should also be considered. Conditions which might justify higher or lower values are discussed below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value in those cases where there is substantial technical risk. The following are indicators that such a condition may exist: the contractor is either developing or applying advanced technologies; items are being manufactured using specifications with stringent tolerance limits; the efforts require highly skilled personnel or require the use of state of the art machinery; the services and analytical efforts are of utmost importance to the Government and must be peformed to exacting standards; the contractor's independent development and investment has reduced the Government's risk or cost; the contractor has accepted an accelerated delivery schedule to meet DoD requirements; the contractor has assumed additional risk through warranty provisions. A maximum value may be justified in the development or initial production of a new item, particularly if performance or quality specifications are tight, or if there is a high degree of development or production concurrency. Extremely complex, vital efforts to overcome difficult technical obstacles which require personnel with exceptional abilities, experience and professional credentials may also justify a value significantly above normal.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value in those cases where the technical risk is low. The following are indicators that such a condition may exist: off the shelf items are being acquired; relatively simple requirements are specified; there is little application of complex technology; efforts that do not require highly skilled personnel or which are relatively routine; mature programs; follow-on efforts and repetitive type procurements. A profit value significantly below normal may be justified for circumstances such as the following: routine services; production of simple items; rote entry or routine integration of government furnished information; simple operations within government owned facilities.

(ii) *Management.* This criterion considers the management effort involved on the part of the contractor to integrate the resources necessary to meet contract requirements. Resources include raw materials, labor, technology, information, and capital. The contracting officer should assess the contractor's management and internal control systems as well as the management involvement expected on the individual contract action. The contracting officer should consider the degree of cost mix as an indication of the types of resources applied and value-added by the contractor. The cost elements should not, themselves, be a basis for profit assignment. In evaluating management efforts, the contracting officer should use reviews made by the field contract administration office or other pertinent DoD field offices. The contracting officer should also give consideration to the contractor's support of federal socioeconomic programs, such as small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, handicapped sheltered workshops, labor surplus areas, and energy conservation. Conditions which might justify higher and lower values are discussed below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value in those cases where the management effort is intense. The following are indicators that such a condition may exist: the value-added by the contractor is both considerable and reasonably difficult; the effort involves a high degree of integration or coordination; the contractor has a substantial record of active participation in federal socioeconomic programs. A maximum value for management may be justified under conditions such as the following: efforts requiring large scale integration of the most complex nature; major international activities requiring significant management coordination; or efforts with management milestones of critical importance.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value in those cases where the management effort is minimal. The following are indicators that such a condition may exist: a mature program where many end item deliveries have been made; the contractor adds minimum value to an item; routine efforts which require minimal supervision; the contractor provides poor quality, untimely proposals; the contractor fails to provide an adequate analysis of subcontractor costs; the contractor does not cooperate in the evaluation and negotiation of the proposal. A significantly below normal profit value may be justified if reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security) or if the effort requires an unusually low degree of management involvement.

(iii) *Cost control.* This criterion focuses on the contractor's efforts to reduce and control costs. The principal areas for evaluation are the expected reliability of cost estimates, cost reduction initiatives, and cost control management. Other factors which bear on the contractor's ability to meet the cost targets, such as foreign currency exchange rates and inflation rates, may also be considered. The contracting officer should assess the reliability of the contractor's estimating system and the extent of the contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reforms, value engineering). In evaluating cost control management, the contracting officer should consider the adequacy of the contractor's management approach to the control of cost and schedule. Conditions which might justify higher or lower values are discussed below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. The following are indicators that such a condition may exist: the contractor provides fully documented and reliable cost estimates; the contractor has an aggressive cost reduction program that has demonstrable benefits; the contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); the contractor has a proven record of cost tracking and control.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value if the contractor demonstrates minimal concern for cost control. The following are indicators that such a condition may exist: the contractor has a marginal cost estimating system; the contractor has made minimal effort to initiate cost reduction programs; the contractor's cost proposal is inadequate; or the contractor has a record of cost overruns or other indications of unreliable cost estimates and lack of cost control.

(b) *Contract type risk.* This factor focuses on the degree of cost risk accepted by the contractor under varying contract types.

(1) *Profit base.* The amount of profit for contract type risk is computed by multiplying the value assigned by the contracting officer times total allowable costs *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money.

(2) *Normal values and designated ranges.* (i) The following normal values and designated ranges are applicable to contracts that contain no provisions or limited (first article financing) provisions for progress payments:

Contract type	Normal value (percent)	Designated range (percent)
Firm fixed-price	5	4 to 6
Fixed-price-incentive	3	2 to 4
Cost-plus-incentive fee	1	0 to 2

Contract type	Normal value (percent)	Designated range (percent)
Cost-plus-fixed fee	5	0 to 1

(ii) For fixed-price type contracts that contain provisions for progress payments, the normal value and designated ranges shown below shall be used. The value assigned by the contracting officer shall be further adjusted by adding an amount to recognize the contractor's investment in working capital, as described in 215.970-1(b)(4).

Contract type	Normal value [1] (percent)	Designated range [1] (percent)
Firm fixed-price	3	2 to 4
Fixed-price-incentive	1	0 to 2

[1] Add working capital adjustment to value assigned.

(iii) Time and material contracts; labor-hour contracts; overhaul contracts priced on a time and material basis; and firm fixed-price-level-of-effort-term contracts shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit value for contract type risk and shall not receive the working capital adjustment described in (b)(4). However, higher profit values within the designated range may be justified to the extent that portions of cost are fixed.

(iv) Fixed-price contracts with redeterminable provisions should be considered as a fixed-price-incentive contract with below normal conditions.

(v) In determining contract type risk, it is appropriate to consider additional risks associated with contracts for foreign military sales (FMS) which are not funded by United States appropriations. For example, a contract containing an offset arrangement with the foreign country may expose the contractor to additional risk. The contracting officer may recognize additional risk if the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items. If an additional risk factor is recognized, the total profit factor for cost risk shall not exceed the designated range limits established for each contract type. The additional assigned value for contract type shall not apply to FMS sales made by United States Government inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

(3) *Evaluation criteria.* (i) When assigning a profit value, the contracting officer should consider elements that affect contract type risk such as: length of contract; adequacy of cost data for projections; economic environment; nature and extent of subcontracted activity; protection provided to the contractor under contract provisions (e.g., Economic Price Adjustment clauses); the ceilings and share lines contained in incentive provisions. Conditions which might justify higher or lower values are discussed immediately below.

(A) *Above normal conditions.* The contracting officer may assign a higher than normal value in those cases where there is substantial contract type risk. The following are indicators that such a condition may exist: efforts where there is minimal cost history; long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty; if the contract includes incentive provisions (e.g., cost and performance incentives) which place a high degree of risk on the contractor.

(B) *Below normal conditions.* The contracting officer may assign a lower than normal value in cases where contract type risk is low. The following are indicators that such conditions may exist: contracts involving a very mature product line with extensive cost history; relatively short-term contracts; contracts that contain provisions that substantially reduce the contractor's risk; the contract includes incentive provisions which place a low degree of risk on the contractor. Considerations regarding contract type risk on incurred costs are separately discussed below.

(ii) The contracting officer's assessment of contract type risk shall address the extent that costs have been incurred prior to definitization of the contract action (see also 217.7503(b)(8)). This assessment shall include any reduced contractor risk on both (A) the contract before definitization and (B) the remaining portion of the contract. The contracting officer should generally regard the contract type risk to be below normal within the designated range of the contract type. However, in cases where a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0% for contract type risk, regardless of contract type. The contracting officer's risk assessment may consider the limitations placed on the contractor for the period prior to definitization.

(4) *Working capital adjustment (Maximum Value 4%).* For fixed-price type contracts that contain provisions for progress payments, the contracting officer shall calculate a working capital adjustment. This adjustment is added to the contract type risk and it shall not exceed 4% of contract costs. Although the working capital adjustment employs a formula approach, the intent is only to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies and the economic environment. It is not intended to be an exact calculation of such costs.

The formula is discussed below:

Contract Costs

Multiply by Portion Financed by Contractor

Contract Costs Financed by Contractor

Multiply by Contract Length Factor

Working Capital Investment

Multiply by Interest Rate

Working Capital Adjustment

(i) *Contract costs.* This represents all allowable costs, *including* contractor G&A expenses and IR&D/B&P expenses (but not facilities capital cost of money). The contracting officer may adjust this amount where the contractor has a minimum cash investment (e.g., subcontractor progress payments liquidated late in period of performance). The contracting officer should also consider the degree which some costs are covered by special financing provisions, such as advance payments, and special funding arrangements on multi-year contracts.

(ii) *Portion financed by contractor.* The contractor's share of financing is generally the portion not covered by progress payments. Typically, this will be 100% minus the customary progress payment rate (FAR 32.501-1). For example, if the contract provides for progress payments at 75%, then the contractor's share of financing would be 25% (100% minus 75%). On contracts that provide progress payments to small businesses or flexible progress payments (252.232-7004), the contractor's share shall be computed using the customary progress payment rate for large businesses.

(iii) *Contract costs financed by contractor.* Multiply contract costs by portion financed by contractor.

(iv) *Contract length factor.* This factor represents the period of time that the contractor has a working capital investment in the contract. It is to be based on the time necessary for the contractor to complete the substantive portion of the work. The contract length factor is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded. It also should not include periods of performance contained in option provisions. The contracting officer should use the table below to establish the contract length factor. On contracts with multiple deliveries, the contracting officer should develop a weighted average contract length. Sampling techniques are permissible, so long as they provide a representative result.

Period to perform substantive portion	Factor
21 months or less	.40
22 to 27 months	.65
28 to 33 months	.90
34 to 39 months	1.15
40 to 45 months	1.40
46 to 51 months	1.65
52 to 57 months	1.90
58 to 63 months	2.15
64 to 69 months	2.40
70 to 75 months	2.65
76 months or more	2.90

(v) *Working capital investment.* Multiplying the contract costs financed by contractor by the contract length factor.

(vi) *Interest rate.* The contracting officer shall use the interest rate promulgated by the Secretary of the Treasury (230.7003(c)). No other interest rate is authorized.

(vii) *Working capital adjustment.* Multiply the working capital investment by the interest rate. The result is the working capital adjustment. It may not exceed 4% of contract costs.

EXAMPLE

JIC Manufacturing is to be awarded a negotiated contract for four assemblies. The contracting officer's prenegotiation cost objective for each is $500,000. The period of performance is 40 months with assemblies being delivered in the 34th, 36th, 38th, and 40th month of the contract (average period is 37 months). JIC Manufacturing will receive progress payments at 75% (contractor portion is 25%), and the current interest rate is 8%.

Contract Costs	$2,000,000
Portion Financed by Contractor	25%
Costs Financed by Contractor	$500,000
Contract Length Factor	1.15
Working Capital Investment	$575,000
Interest Rate	8%
Working Capital Adjustment	$46,000*

* Equates to 2.3% profit on total costs

(c) *Facilities capital employed.* The intent of this profit factor is to encourge and reward aggressive capital investment in facilities that benefit DoD. This factor recognizes both the facilities capital to be employed by the contractor in the performance of the contract and the contractor's commitment to improving productivity. The amount of recognition is differentiated among asset categories in proportion to the potential for productivity increases. In addition to the net book value of facilities capital employed, the contracting officer may consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that (i) achievable benefits to DoD will result from the investment, and (ii) the benefits of the investment are included in the forward pricing structure.

(1) *Profit base.* The profit amount for facilities capital employed is computed by multiplying the values assigned times the allocated facilities capital attributable to buildings and equipment, as derived in DD Form 1861, "Contract Facilities Capital Cost of Money" (see 230.7004).

(2) *Normal values and designated ranges.*

(i) Except as provided in 215.970-1(c)(2)(ii), the normal values and designated ranges for land, buildings, and equipment are as shown below.

Asset type	Normal value	Designated range
Land	0%	N/A
Buildings	15%	10% to 20%
Equipment	35%	20% to 50%

(ii) It is recognized that the method used to allocate facilities capital cost of money may produce disproportionate allocation of assets to research and development and services efforts which are being provided to the government by highly facilitized manufacturing firms. In such cases the contracting officer should use the alternate normal values and designated ranges shown below.

Asset type	Normal value	Designated range
Land	0%	N/A
Buildings	5%	0% to 10%
Equipment	20%	15% to 25%

(iii) If the contracting officer selected the alternate for performance risk (215.970-1(a)(2)(ii)), no profit for facilities capital employed may be assigned.

(3) *Evaluation criteria.* The contracting officer's assessment should relate the usefulness of the facilities capital to the goods or services being acquired under the individual contract action, as well as to the broader perspective of defense programs. The contracting officer may assign any appropriate profit value within the designated range. It is expected that the maxi-

mum values will be restricted to those cases where the benefits of the facilities capital investment are substantially above normal. The contracting officer should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment. The assessment should consider the economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs. The contractor's level of investment in defense related facilities as compared with the portion of the contractor's business which is derived from DoD may be a useful indicator for the contracting officer in evaluating the contractor's commitment to improving the productivity of defense program efforts. The contracting officer should consider any special protection provisions that may be included in the contract which reduce the contractor's risk of investment recovery (termination protection clauses, capital investment indemnification, productivity savings rewards (215.872). Conditions which might justify higher or lower values are discussed below.

(i) *Above normal conditions.* The contracting officer may assign a higher than normal value if the facilities capital investment has direct and identifiable benefits which are considered exceptional. The following are indicators that such a condition may exist: new investments in state-of-the-art technology which reduce acquisition costs or yield other tangible benefits such as improved product quality or accelerated deliveries; investments in new equipment for research and development applications; or the contractor can demonstrate that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs. A value significantly above normal may be justified when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced.

(ii) *Below normal conditions.* The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. The following are indicators that such a condition may exist: allocations of capital which are predominantly applied to commercial product lines; furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; old facilities or extensive idle facilities. A value significantly below normal may be justified when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

(iii) The contracting officer shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, takeovers, sales of corporate entities, or similar actions.

[52 FR 28708, Aug. 3, 1987; 52 FR 30688, Aug. 17, 1987; 52 FR 36420, Sept. 29, 1987]

215.970-2 Instructions for completing DD Form 1547.

The DD Form 1547 not only assists the contracting officer in establishing a profit objective under the Weighted Guidelines Method, but it also serves as the principal source document for reporting profit statistics to DoD's management information system. It is essential that this form be prepared accurately.

(a) *General guidance.* The items contained on the DD Form 1547 shall be completed as shown below. All amounts are those related to the price of the contract action without regard to funding status (e.g., amounts obligated). Option amounts for additional quantities shall be handled as a separate contract action when exercised. Items marked with an asterisk (*) do not have to be completed by the contracting officer if exempted from the profit reporting requirement (204.673-3). In some cases, the information required will be identical to information provided on the related DD Form 350, "Individual Contracting Action Report."

(1) *Item 1—Report Number* *. Each field contracting office designated for profit reporting shall establish a control system for consecutively numbering completed DD Forms 1547. A number does not have to be assigned

until contract negotiations have been completed. This number is intended to identify the specific DD Form 1547 in DoD's management information system and will be used for follow-up actions. The control number shall be four-digits starting with 0001 at the beginning of each fiscal year. The four-digit number shall be followed by a dash and the last two digits of the fiscal year (e.g., 0004-87 for 4th action in fiscal year 1987). Numbers less than 1000 shall still be assigned four digits (e.g., 0004, 0055, 0123).

(2) *Item 2—Basic Procurement Instrument Identification No. (PIIN).* This is a four-part designation in the manner prescribed in 204.671-5(b) Item B1 for completing DD Form 350. The parts are as follows:

Subitem A—Purchasing Office;

Subitem B—Fiscal Year (FY);

Subitem C—Type Procurement Instrument Code (TPIC); and

Subitem D—Procurement Instrument Serial Number (PRISN).

(3) *Item 3—Supplemental Procurement Instrument Identification No. (SPIIN).* Enter supplemental agreement or other modification number in the manner prescribed for the DD Form 350 in 204.671-5(b) Item B2.

(4) *Item 4—Date of Action* *. Enter the date when the price of the contract action was negotiated in the following manner:

Subitem A—Year: Use last two digits (e.g., 87 for 1987).

Subitem B—Month: Use two digit number (e.g., 03 for March).

(5) *Item 5—Contracting Office Code* *. Enter the code assigned to the contracting office in accordance with DoD Procurement Coding Manual, Volume 3.

(6) *Item 6—Name of Contractor**. Enter the name of the contractor (including division name).

(7) *Item 7—Data Universal Numbering System (DUNS) Number* *. Enter number in the manner prescribed for the DD Form 350 in 204.671-5(b) Item B5A.

(8) *Item 8—Federal Supply Code* *. Enter the appropriate Federal Supply Class or Service Code in accordance with instructions shown in 204.671-5(b) Item B12A.

(9) *Item 9—DoD Claimant Program* *. Enter the code in the manner prescribed for the DD Form 350 in 204.671-5(b) Item B12B.

(10) *Item 10—Type of Contract Code* *. Enter the appropriate code as follows:

Description	Code
FPR (all types)	A
FPI (all types)	L
FFP	J
FP(E)	K
CPAF	R
CPFF	U
CPIF (all types)	V

(11) *Item 11—Type Effort* *. Enter the appropriate code as follows:

Description	Code
Manufacturing	1
Research and Development	2
Services	3

(12) *Item 12—Use Code* *. Enter the appropriate code for use of the Weighted Guidelines Method as follows:

Description	Code
Alternate Performance Risk	1
Standard Facilities Capital Employed	2
Alternate Facilities Capital Employed	3
Alternate Structured Approach	4
Modified Weighted Guidelines Method	5

(13) *Items 13 thru 20—Cost Category.* Enter the dollar values of the prenegotiation objectives for each cost category. All dollar values shall be expressed to nearest whole value (e.g., $200,008.55=$200,009). The amount for G&A expenses in Item 19 shall also include contractor IR&D/B&P expenses.

(14) *Items 21 thru 29—Weighted Guidelines Profit Factors.* Enter dollar values, factors, and percentages in spaces provided. All dollar values shall be expressed to nearest whole value (e.g., $200,008.55=$200,009). The contract length factor and all percentages shall be expressed to nearest hundredth (e.g., contract length factor=1.65 or interest rate=8.25%).

(15) *Total Profit Objective.* Enter the total of items 24, 25, 26, 28, 29.

(16) *Items 31 thru 35—Negotiation Summary.* Enter dollar values and percentages as indicated. All dollar values shall be expressed to nearest whole value (e.g., $200,008.55=$200,009). Percentages shall be expressed to nearest hundredth (e.g., profit-rate=10.25%).

(17) *Items 36 thru 39—Contracting Officer Approval.* All forms shall be signed by the contracting officer. Include complete commercial telephone number (e.g., area code) so that follow-up actions can be accomplished quickly.

(18) *Items 96 thru 99—Optional Use.* These blocks have been reserved for optional use by Military Services and Agencies.

(b) *Special guidance.* (1) While it is recognized that fixed-price type contract actions are negotiated on the basis of total price, the negotiation summary portion of the DD Form 1547 shall be prepared showing the contracting officer's best estimates of cost and profit.

(2) Where multiple profit rates apply to a single negotiation, a consolidated DD Form 1547 shall be prepared.

(3) The profit analysis for indefinite-delivery-type contracts is generally based on the annual requirements. If the annual requirement is expected to exceed $500,000, a DD Form 1547 summarizing cost and profit estimates for the annual requirement shall be submitted.

[54 FR 28708, Aug. 3, 1987, as amended at 54 FR 53616, Dec. 29, 1989]

215.971 Alternate approaches to Weighted Guidelines Method.

As provided in 215.902(a)(1)(ii) and (iii), alternate structured approaches may be used in lieu of the Weighted Guidelines Method. The contracting officer shall adhere to the provisions on profit factors and offset policy described below. See also guidance on cost-plus-award-fee contracts in 215.973.

215.971-1 Recognized profit factors.

The basic structure of the Weighted Guidelines Method establishes a uniform approach for examining the three components of profit: performance risk, contract type risk (including working capital), and facilities capital employed. Alternate approaches should also consider these factors using the general principles described in 215.970.

215.971-2 Offset policy for facilities capital cost of money.

The values of the profit factors used in the Weighted Guidelines Method have been adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (FAR 31.205-10). Reductions have been made directly to the profit factors for performance risk. In order to assure that this policy is applied to all DoD contracts which allow facilities capital cost of money, similar adjustments shall be made to contracts which use alternate structured approaches. Therefore, the contracting officer shall reduce the overall prenegotiation profit objective derived from alternate structured approaches by 1% of total cost or the amount of facilities capital cost of money, whichever is less.

[52 FR 28708, Aug. 3, 1987; 52 FR 36420, Sept. 29, 1987]

215.971-3 Instructions for Completing DD Form 1547.

For all selected field contracting offices identified in 204.673-3, the contracting officer shall report Items 1 through 12 and 31 through 39 on all contract actions of $500,000 or more. A DD Form 1547 is necessary, even where an alternate structured approach is used because it is the principal source document for DoD's management information system on profit. Profit amounts in the negotiation summary shall be net of offset for facilities capital cost of money (215.971-2). Only the base fee shall be reported on cost-plus-award-fee contracts.

215.972 Modified Weighted Guidelines Method for nonprofit organizations.

215.972-1 Procedures for establishing fee objectives.

It is DoD's policy to establish the fee objective on defense contracts with nonprofit organizations in a manner that will stimulate efficient contract performance. To achieve this, the contracting officer shall use the Modified Weighted Guidelines Method described below. For purposes of applying this method, a nonprofit organization is a business entity which operates exclusively for charitable, scientific, or educational purposes; whose earnings do not benefit any private shareholder or individual; whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(a) The contracting officer shall use the guidelines described in 15.970 but make the following adjustments to the fee objective:

(1) If the standard performance risk factor is used (215.970-1(a)(2)(i)), the fee objective shall be reduced by an amount equal to 1% of total costs, *excluding* G&A expenses, IR&D/B&P expenses, and facilities capital cost of money. If the alternate performance risk factor is used (215.970-1(a)(2)(ii)), then the reduction shall be 2%.

(2) The designated range for the contract type risk shall be −1% to 0% of total costs, *excluding* G&A expenses, IR&D/B&P expenses, facilities capital cost of money, for a cost-plus-fixed-fee contract with nonprofit organizations or elements that have been identified by the Secretary of Defense or Secretary of a Department, or their designees, as receiving sustaining support on a cost-plus-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(b) In addition to the fee amounts computed in 215.972-1(a) above, the contracting officer shall consider the need for fee on contracts to be awarded to a nonprofit organization designated as a Federally Funded Research and Development Center (FFRDC). Such consideration shall include the FFRDC's proportion of retained earnings, as established under generally accepted accounting methods, that is relatable to DoD contracted effort. The need for fee may be based on the FFRDC's facilities capital acquisition plans, working capital funding as assessed on operating cycle cash needs, contingency funding, and provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

[52 FR 28708, Aug. 3, 1987; 52 FR 36420, Sept. 29, 1987]

215.972-2 Instructions for completing DD Form 1547.

A DD Form 1547 shall be prepared on all contract actions using the Modified Weighted Guidelines Method if the applicability criteria specified for structured approaches in 15.902 are met. The instructions contained in 215.970-2 should be applied. Fee amounts included in the negotiation summary shall be net of offsets and need for fee considerations.

215.973 Cost-plus-award-fee contracts.

The policies and procedures for establishing fee provisions on cost-plus-award-fee contracts are contained in FAR 16.404-2. Although these procedures prohibit application of the Weighted Guidelines Method to cost-plus-award-fee contracts, and similarly the general guidance on alternate structured approaches contained in 215.971-1, the offset policy for facilities capital cost of money shall apply. Therefore, the contracting officer shall reduce the base fee on cost-plus-award-fee contracts by the lesser of (a) 1% of total costs; or (b) the amount of facilities capital cost of money.

[52 FR 28708, Aug. 3, 1987; 52 FR 36420, Sept. 29, 1987]

Subpart 215.10—Preaward, Award, and Postaward Notifications, Protests and Mistakes

215.1001 Notifications to unsuccessful offerors.

(b)(2) Acquisitions processed under small purchase procedures are exempt from the requirements of FAR 15.1001(b)(2).

[51 FR 46146, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987]

215.1003 Debriefing of unsuccessful offerors.

(a) Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by purchasing office officials familiar with the rationale for the selection decision and contract award.

215.1070 Classified information.

Classified information shall be furnished only in accordance with regulations governing classified information.

PART 216—TYPES OF CONTRACTS

Subpart 216.1—Selecting Contract Types

Sec.
216.101 General.
216.102 Policies.
216.104 Factors in selecting contract types.

Subpart 216.2—Fixed-Price Contracts

216.201 General.
216.203-4 Contract clauses.
216.203-70 Fixed-price contracts with economic price adjustment.

Subpart 216.3—Cost-Reimbursement Contracts

216.306 Cost-plus-fixed-fee contracts.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.
216.402-2 Technical performance incentives.
216.403 Fixed-price incentive contracts.
216.403-2 Fixed price incentive (successive targets).
216.406-70 Fixed-price contracts with award fees.
216.404 Cost-reimbursement incentive contracts.
216.404-1 Cost-plus incentive fee contracts.
216.404-2 Cost-plus-award-fee contracts.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.
216.502 Definite quantity contracts.
216.503 Requirement contracts.
216.506 Ordering.

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.
216.603-2 Application.
216.603-3 Limitations.

Subpart 216.7—Agreements

216.702 Basic agreements.
216.703 Basic ordering agreements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Source: 51 FR 46164, Dec. 23, 1986, unless otherwise noted.

Subpart 216.1—Selecting Contract Types

216.101 General.

(a) In addition, the role of profit in selecting contract type includes the following:

(1) Profit, generally, is the basic motive of business enterprise. Both the Government and its defense contractors should be concerned with harnessing this motive to work for the effective and economical contract performance required in the interest of national defense. To this end, the parties should seek to negotiate and use the contract type best calculated to stimulate outstanding performance. The objective should be to insure that outstandingly effective and economical performance is met by high profits, mediocre performance by mediocre profits, and poor performance by low profits or losses. The proper application of these objectives on a contract by contract basis should normally result in a range of profit rates.

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or loses in relation to achieving or failing to achieve realistic targets. When award is based on effective price competition, there is reasonable assurance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic, and the degree of uncertainty

affecting the work to be performed, should be carefully considered in determining which type of contract should be selected and how it should be used.

(3) The policies in (1) and (2) above require that the contractor assume a reasonable degree of cost responsibility as early in contract performance as is possible. This can be achieved only through vigorous contract administration and effort on the part of both parties to assure timely pricing. Particularly in fixed-price type contracts providing the price revisions, delays in pricing actions by either party may distort the type of contract which has been agreed upon and such delays must be avoided.

(4) When a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact.

(5) Notwithstanding the validity of profit as a motivating factor in general, there are situations, particularly in the early stages of research and development, in which the profit motive may be secondary. Harnessing the profit motive at the early stages of such procurements may not be effective or desirable in view of the high degree of technical and cost risk associated with performance or consistent with achieving desired technical objectives. The contracting officer's objective should still be "effective and economical performance," but the relative weight of these factors must be kept in balance (see 216.104-(S-71)). Of course, outstanding performance can still be rewarded under a research and development contract, by proper application of incentive techniques.

(6) The firm fixed-price contract is the most preferred type for harnessing the profit motive because the contractor accepts full cost responsibility, and the relationship between cost control and profit dollars is established at the outset of the contract. Accordingly, when a reasonable basis for firm pricing exists (see 216.202), the firm fixed-price contract shall be used, because its use under these circumstances will provide the contractor with a maximum profit incentive to control the costs of performance. However, the contracting officer must be alert to the fact that in certain situations the use of special contract incentive provisions may be more appropriate. While maximum incentive to a contract exists in a firm fixed-price contract, the basis for the application of firm fixed-price is the knowledge that the price has been arrived at either through competition or through sound pricing techniques which keep pricing uncertainties to a minimum. When contracting for research and development, or when price competition is not present, and (i) when the cost or pricing data available does not permit sufficiently realistic estimates of the probable cost of performance, or (ii) uncertainties surrounding the contract performance cannot be sufficiently identified to evaluate their impact on price, the use of a type of contract other than firm fixed-price should be considered. For example, a profit incentive to control costs can be achieved through use of the fixed-price incentive contract, and to a lesser degree, the cost-plus-incentive-fee contract, when appropriate target costs and incentive arrangements can be negotiated.

(b) The specific type of contract should be determined by the degree of risk in contract performance. When the risk is minimal or can be predicted with an acceptable degree of certainty, a firm fixed-price contract is preferred. However, as the uncertainties become more significant, other fixed price or cost type contracts should be employed to accommodate these uncertainties and to avoid placing too great a cost risk on the contractor.

216.102 Policies.

(d) Set forth below is a format for the D&Fs to be made by the contracting officer with respect to the use of a cost, cost-plus-fixed-fee, or incentive type contract, as required by 10 U.S.C. 2306(c) (See FAR 16.301-3(c) and FAR 16.403(c)). The format may be modified as appropriate.

(Military Department or Agency)

Determination and Findings

Authority To Use a (1) Contract

Upon the basis of the following findings and determination which I hereby make pursuant to the authority of 10 U.S.C. 2306(c), the proposed contract described below may be entered into on a (1) basis.

Findings

1. The (2) proposes to enter into a (1) contract for the acquisition of (3) at an estimated cost of $ (4).

2. The work to be performed is (5).

Determination

1. It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract.(6)

(Alt: The use of the proposed type of contract is likely to be less costly than other methods.)(6)

(Alt: It is impracticable to secure services of the kind or quality required without the use of the proposed type of contract and the use of such type of contract is likely to be less costly than any other method.)(6)

2. The estimated cost of the proposed contract is $ (4).(7)

Date ——————— ———————

NOTES

(1) Enter type of contract to be used, i.e. fixed-price incentive, cost-plus-incentive-fee, cost, or cost-plus-fixed-fee.

(2) Contracting activity.

(3) Brief description of supplies or services.

(4) Enter amount to nearest thousand.

(5) Describe the nature of the work to be performed and set forth the facts (for the type of contract proposed, see FAR Part 16) that shows why it is impracticable to secure supplies or services of the kind or quality required without the use of such type of contract, or that such method of contracting is likely to be less costly than other methods. The supporting facts should be confined to those pertinent to the specific determination being made. However where the facts adequately support alternative determinations, they should be set forth conjunctively when conjunctive determinations are to be used.

(6) Use the determination responsive to the findings. See Note 5 above.

(7) Determination to be made when a cost-plus-fixed-fee contract is proposed.

216.104 Factors in selecting contract types.

(S-70) *Stability of design.* Other factors to consider are stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior production experience and adequacy of the contractor's estimating system.

(S-71) *Other factors based on development stage.*

(1) *Research and development (R&D).* The selection of the appropriate contract type is, in the final analysis, the responsibility of the contracting officer. However, because of the importance of technical considerations at the R&D stage, the choice of contract type shall not be made without obtaining the recommendations of cognizant technical personnel. Generally, the selection of contract type should also be discussed with prospective contractors. Where appropriate, R&D solicitations should permit prospective contractors to propose an alternative contract type. Any counterproposal must be supported by the contractor's rationale for his choice. The contracting officer shall include a statement in the file, setting forth his rationale for the type of contract ultimately selected. The categories of Research, Exploratory Development, Advanced Development, Engineering Development and Operational Systems Development, represent the spectrum of the R&D cycle and were so designated to provide an appropriate breakdown of R&D effort for management purposes. Each category has a prime technical or functional objective and certain distinctive features. It should not be inferred, however, that each category is a discrete step in the R&D process with a clear beginning and end entirely separate and distinct each from the other. In the latter categories of development, it is possible for different parts of a project to fit several different category definitions. Thus, a project properly categorized as Engineering Development may include subsystem work or elements of work that are, because of their particular technical state of development, truly Advanced Development, or in rare cases, even Exploratory Development. Again, the contract must be selected to fit the work required, not selected solely

on the basis of the classification of the overall program.

(2) *Research and exploratory development.* The categories of Research and Exploratory Development form a logical grouping of the R&D process at one end of the spectrum. In Research and Exploratory Development contracting, the nature of the work, the usual lack of definitive requirements, the inability to measure technical objectives, the inability to measure risk, the amount of government technical direction and control desired, the lack of competition, and whether the contractor will be an educational institution, commercial company, or a not-for-profit organization, may be primary consideration in choosing the type of contract. Price is not necessarily the primary factor in determining the contract type. While no restriction exists on the type of contract which may be used, the nature of the work in these categories most frequently necessitates the negotiation of a CPAF, CPFF term, cost-no-fee, or cost-sharing contract. In cases where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price level of effort contract may be appropriate. Incentive type contracts should not be used unless the contractor and Government agree that an incentive arrangement is desirable, can be effective, and, upon completion, can be evaluated in terms of the incentives.

(3) *Advanced development.* The primary objective of Advanced Development is to determine and demonstrate, experimentally, the acceptability of the technical, economic, logistic and operational characteristics of one or more advanced concepts considered suitable for solution of a clearly stated military problem or technical objective. Advanced development provides the development effort which couples the inventory of science, technological and feasibility concepts derived from research and exploratory development to the end use oriented engineering and operational system developments. Included in this is the experimental demonstration of advanced technologies, equipment, subsystems, or systems, as well as the study, design, development, test and evaluation of advanced or innovative hardware, equipment or instrumentation necessary to provide a basis for selection among alternatives. It includes systems analyses tradeoff studies, cost effectiveness analyses and particularly exploratory technological effort directly responsive to the objectives of the specific advanced development. Further, it includes conceptual effort required to generate the information to satisfy the prerequisites to initiation of system development wherein advanced development efforts are aimed at risk reduction and providing feasibility—often referred to as the validation phase or prototype phase. It is in this category that the first significant hardware for test is developed. In this broad category of work, selection of the best contract type should be made only after careful identification of the specific nature of the work required. No restriction exists as to the type of contract that may be used for work in this category. The nature of the work, however, often necessitates the use of CPFF completion type contracts. Incentive contracts can be effectively used in this category when realistic, measurable targets can be identified and program success can be predicted with a reasonable degree of accuracy. Contracts with only cost incentive should not be used in procurement where, at the outset, it can be expected that there will be a large number of major technical changes in the project or where actions beyond the control of the contractor may influence the just determination of the contractor's achievement. Competition may be used in these efforts for risk reduction, design innovation and cost reduction.

(4) *Engineering development and operational systems development.* Engineering and Operational Systems Development, because of many similarities, forms a logical grouping in the spectrum of R&D categories. These categories, the ultimate aim of which is production and development, include all effort the primary objective of which is the engineering design and final engineering demonstration of the technical, economic, logistic and operational characteristic of an experimen-

tally feasible and acceptable system, equipment, subsystem, component or process judged to be the optimum solution to clearly stated military problems or technical objectives. In Engineering Development, such effort is founded on the probability of eventual procurement for inventory and use, and, therefore, includes effort leading to the demonstration of acceptability for such procurement. Operational Systems Development effort has the primary objectives of producibility demonstration and R&D support of final service test of the logical and operational development of an acceptable system, equipment, subsystem or component, approved for procurement and operational deployment or otherwise specifically approved for inclusion in this category. It may include the building of one or more production prototypes utilizing all processes, tooling, and test equipment considered for the production process thereby constituting a demonstration and qualification of the production process. Even when the overall project is in Engineering or Operational System Development, there may be integral supporting tasks that are still in the Advanced Development stage and the contract type for these tasks should be selected accordingly. The type of contract selected should be decided on the basis of major factors such as: (i) The definitiveness of the project at this stage and its bearing on the accuracy of cost estimates; (ii) the completion schedule required for satisfactory operational deployment; (iii) the degree of risk and uncertainty expected; (iv) the ability to establish meaningful and measurable incentives; (v) the need for effort overlapping that of earlier development stages; (vi) the desirability of firm technical direction by the Government; and (vii) the degree of configuration control to be exercised. Any one or combination of these factors could have a direct bearing on the type of contract selected. Cost reimbursement type contracts are preferred to all development efforts and particularly for major defense systems. When risk has been reduced to the extent that realistic pricing can occur, fixed price type contracts should be used, e.g., when a program has reached the final stages of development and technical risks are minimal. The use of letter contracts shall be minimized.

Subpart 216.2—Fixed-Price Contracts

216.201 General.

(S-70) For development programs, see 235.006(S-70).

[54 FR 7427, Feb. 21, 1989]

216.203-4 Contract clauses.

(a) In addition, the clause should normally be used only when the total contract price is over the small purchase threshold in FAR part 13 and delivery is not to be completed within six months after the contract date.

(b) In addition, the clause should normally be used only when the total contract price is over the small purchase threshold in FAR part 13 and delivery is not to be completed within six months after the contract date.

(c)(1) In addition, the clause shall be limited to contracts in which the price exceeds $50,000 and the period of performance exceeds six months unless its use otherwise is approved by the Chief of the contracting office. An appropriate modification of the clause may be used in advertised procurements. Further, the clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(4) of the clause upon approval by the chief of the contracting office.

(c)(4) Also, if the specific terms and conditions of the authorized clause are not applicable, a modified economic price adjustment clause to cover increases or decreases in the actual costs incurred by the contractor for labor or materials may be included if it is consistent with the above guidelines and is approved by the Department concerned.

(iv) Make the full amount of decrease in the labor rates and fringe benefits or unit prices for materials.

(d)(3) The following factors may be considered in preparing a price adjustment clause meeting the criteria above including construction of appropriate indices:

(i) The clause should not be overly complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor);

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance;

(iv) The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and provide appropriate economic fluctuation in the event of the discontinuance of the publication of the movement of the designated index. This might include the substitution of another index if the time remaining would so justify and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There should not normally be any need to make an adjustment in the event computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations in the event there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index;

(v) An index should be structured to encompass a large sample of relevant items yet bear a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to the contract performance, yet must be significantly broad so as to assure the minimal effect of any single company, including the anticipated contractors.

(vi) Construction of an index is largely dependent upon two general series published by the U.S. Department of Labor, Bureau of Statistics (BLS). These are the Industrial Commodities portion of the Producer Price Index and the Wage and Income Series by Standard Industrial Classification for labor. Since there are no BLS published series currently available that relate directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., such composite indices from major portions of the two series described above should be made.

(vii) Normally not more than two indices should be used, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. In the event the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, shall be determined by the PCO in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited in order that all companies may compete on an equal basis. If the clause is to be used in a noncompetitive procurement, the labor and material allocations as determined by the PCO may be subject to negotiation and agreement. For multiyear contracts, there should be established predetermined expenditure profile tables for each of the annual increments in the multiyear buy, with each of the second and subsequent year tables being cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state that percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting as being subject to economic price adjustment, because some of the subcontracting could be for shorter periods of time during the early life of the contract, and would be covered, therefore, by firm priced subcontracting. It may be possible to exclude certain areas of overhead from economic price adjustment protection; for example, depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges are illustrated as some of the areas that should be examined in detail. In the same manner, consideration should be given to the necessity to include economic fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuation in the economy. That portion of the contract which is determined to be proper for economic fluctuation protection shall then be allocated to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events positive for price adjustments. Adjustments should be of such a frequency so as to afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges, above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(4) Consistent with the factors set forth above, the contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(5) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data as provided for in 215.804-3, it will be the responsibility of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

[51 FR 46164, Dec. 23, 1986, as amended at 53 FR 38194, Sept. 29, 1988; 53 FR 46458, Nov. 17, 1988]

216.203-70 Fixed-price contracts with economic price adjustment.

(a) *Price adjustment for basic steel, aluminum, brass, bronze or copper mill products.* The price adjustment clause at 252.216-7000 is authorized for use in fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established catalog or market price exists for the particular product being procured and has been verified in accordance with criteria in 215.804-3(c). The 10 percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria set forth in FAR 15.804-3 and as required by paragraph (c)(4) of the clause.

(b) *Price adjustment for nonstandard steel items.* The price adjustment clause at 252.216-7001 is authorized for use in fixed price supply contracts when:

(1) The contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(2) The items being procured are nonstandard steel items made wholly or in part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) of the clause is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors to complete all blanks in accordance with the applicable notes. When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (d) of the clause and Note (8) of the clause), the established price shall be verified in accordance with 215.804-3 prior to contract award. When the clause is to provide for adjustment on another basis (see Note (8) of the clause), that price must be verified. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with criteria set forth in FAR 15.804-3 (but see Note (8) of the clause) and as required by paragraph (f) of the clause. The 110% figure in paragraph (e) of the clause shall not be exceeded unless approved by the Chief of the Contracting Office.

Subpart 216.3—Cost-Reimbursement Contracts

216.301-2 Application.

While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated cost of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than $100,000.

216.306 Cost-plus-fixed-fee contracts.

(b) *Application.* In addition to the conditions of FAR 16.301-2 being present, a cost-plus-fixed-fee contract is suitable when the level of effort required is unknown; and where measuring achievements in contract performance does not lend itself to the subjective evaluation required in CPAF contracts.

(c)(S-70) The cost-plus-fixed-fee contract shall not be used for procurements categorized as either Engineering Development or Operational System Development; which have completed the Validation Phase except with the approval of the Head of a Contracting Activity or his designee, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

[51 FR 46164, Dec. 23, 1986, as amended at 53 FR 38194, Sept. 29, 1988]

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402-2 Technical performance incentives.

Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

(S-70) *Description.* A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases in profit or fee to the extent that such targets are surpassed, and decreases to the extent that such targets are not met. "Performance", as used in this paragraph refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum the Government will accept shall be mandatory under the terms of the Completion form contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. When applied to the performance of the contractor, the incentive should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

[51 FR 46164, Dec. 23, 1986, as amended 53 FR 38194, Sept. 29, 1988]

216.403 Fixed-price incentive contracts.

(b)(3) *Application.* Separate incentive provisions may be made applicable to individual line items of a contract, e.g., when dissimilar work is best incentivised by use of separate formulas.

(c)(S-70) *Quarterly limitation on payments statements.* The contracting officer must be satisfied that the contractor's accounting system will furnish reliable financial information for preparing the Quarterly Limitation on Payments Statement required under the clauses at FAR 52.216-16 and 17. In computing overpayments or underpayments, the contracting officer shall use the following formula when (1) actual costs for individual items delivered are not available and (2) the necessary cost data are available from an accounting system which meets the Cost/Schedule Control Systems Criteria.

FORMULA FOR COMPUTING OVERPAYMENT/UNDERPAYMENT

COID = Cost of items delivered
TCID = Target cost of items delivered
ACWP = Actual cost of work performed
BCWP = Budgeted cost of work performed
BMR = Budgeted management reserve
BTD = Billings to date
TEP = Total estimated price of the contract
TP = Target profit on items delivered
IP = Incentive profit on items delivered

$$\text{COID} = \text{TCID} \times \frac{\text{ACWP}}{\text{BCWP} + \left(\text{BMR} \times \dfrac{\text{BTD}}{\text{TEP}}\right)}$$

Adjusted price = COID + TP + IP
Overpayment/Underpayment = Amount Invoiced − Adjusted Price.

[51 FR 46164, Dec. 23, 1986, as amended 53 FR 38194, Sept. 29, 1988]

216.403-2 Fixed price incentive (successive targets).

(a)(1) This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.403-70 Fixed-price contracts with award fees.

For the use of award fee provisions in fixed-price contracts, see 216.404-2(S-70).

[54 FR 26207, June 22, 1989]

216.404 Cost-reimbursement incentive contracts.

216.404-1 Cost-plus incentive fee contracts.

(b) *Application.* Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it may be appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases, or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs throughout the full range of reasonably foreseeable variations from target cost. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

[51 FR 46164, Dec. 23, 1986, as amended 53 FR 38194, Sept. 29, 1988]

216.404-2 Cost-plus-award-fee contracts.

(b) *Application.* The CPAF contract is suitable for:

(1)(S-70) Level of effort contracts for performance of services where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement; and

(b)(S-70) *Weighted guidelines.* The weighted guidelines method shall not be applied to CPAF contracts with respect to either the base (fixed) fee or the award fee.

(b)(S-71) *Fee.* The amount of the base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee, and the maximum fee (base fee plus award fee) shall not exceed the limitations stated in FAR 15.903.

(b)(S-72)(i) Consideration may be given to (A) constituting a board to evaluate the contractor's performance and determine the amount of the award fee or recommend an amount to the contracting officer and, (B) to afford the contractor an opportunity to present matters on his own behalf.

(ii) The contract shall set forth those criteria to be used in evaluating the contractor's performance to arrive at the award fee. See examples of such criteria set forth in charts below.

(b)(S-73) *Disputes.* The contract shall expressly exclude from the operation of the Disputes clause any dispute over the amount of the award fee.

(c)(S-70) *Limitations.* The CPAF contract shall not be used as an administrative technique to avoid CPFF contracts when the criteria for CPFF contracts apply, nor shall a CPAF contract be used to avoid the effort of establishing objective targets so as to make feasible the use of a CPIF type contract.

(c)(S-72) The CPAF contract shall not be used for procurements categorized as either Engineering Development or Operational System Development which have undergone contract definition, except that where it may be more advantageous to do so, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(S-70) *Other application of the award fee provision.* In certain cases, it may be desirable to motivate and reward a contractor for management performance over and above that which can be objectively measured and incentivised under other forms of government contracts. For example, logistics support, quality, timeliness, cooperation, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation. In such cases, the "award amount" portion of the fee applicable to the CPAF contract is an ideal method for incorporation of these additional incentives into government contracts; the "base fee" or fixed amount portion would not be applicable in these procurements. When approved by the Chief of the Contracting Office, the "award amount" portion of the CPAF contract may be used in conjunction with other types and kinds of contracts for Government's benefit. An Award Review Board shall be appointed at each appropriate installation or activity. Procedures shall be established for the conduct of the evaluation. Further, the award fee provision shall not be used in conjunction with other types and kinds of contracts when the administrative effort or costs for evaluation exceed the benefits to be derived from the use of this arrangement.

EXAMPLES OF CRITERIA

PERFORMANCE EVALUATION REPORT CRITERIA

		Submarginal 0-60	Marginal 61-70	Good 71-80	Very Good 81-90	Excellent 91-100
A Time of Delivery.	(A-1) Adherence to plan schedule.	Consistently late on 20% of plans..	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification.	Meets plan schedule	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A-3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B Quality of Work..	(B-1) Work Appearance.	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B-2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type & standard dwgs..	Has followed guidance, type & standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. reqmts. considering system aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.
	(B-4) Liaison Effectiveness.	Indifferent to requirements of associated activities, related systems, and shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assist. for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B-5) Independence and Initiative.	Constant surveillance req'd. to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job, free of *incompatible* with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C Effectiveness in Controlling and/or Reducing Costs.	(C-1) Utilization of Personnel.	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation.

PERFORMANCE EVALUATION REPORT CRITERIA—Continued

		Submarginal 0-60	Marginal 61-70	Good 71-80	Very Good 81-90	Excellent 91-100
	(C-2) Control Direct Charges (Except Labor)	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C-3) Performance to Cost Estimate.	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

CONTRACTOR PERFORMANCE EVALUATION REPORT

Ratings

Excellent	(91-100)
Very good	(81- 90)
Good	(71- 80)
Marginal	(61- 70)
Submarginal	(0- 60)

Period of .... 19...
Contract Number ....
Contractor ....
Date of Report ....
PNS Technical Monitor/s ....

Category	Criteria	Rating	Item factor	Evaluation rating	Category factor	Efficiency rating
A..............................	TIME OF DELIVERY					
	A-1 Adherence to Plan Schedule..............................	....	×.40=	....		
	A-2 Action on Anticipated Delays..............................	....	×.30=	....		
	A-3 Plan Maintenance..............................	....	×.30=	....		
		Total Item Weighed Rating..............................		....	×.30=	
B..............................	QUALITY OF WORK					
	B-1 Work Appearance..............................	....	×.15=	....		
	B-2 Thoroughness and Accuracy of Work..............................	....	×.30=	....		
	B-3 Engineering Competence..............................	....	×.20=	....		
	B-4 Liaison Effectiveness..............................	....	×.15=	....		
	B-5 Independence and Initiative..............................	....	×.20=	....		
		Total Item Weighed Rating..............................		×.40=..............		

C	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS					
	C-1 Utilization of Personnel		× .30 =			
	C-2 Control of all Direct Charges other than labor		× .30 =			
	C-3 Performance to Cost Estimate		× .40 =			
		Total Item Weighed Rating			× .30 =	
		TOTAL WEIGHED RATING				
		Rated by:				
		Signature(s)				

NOTE.—Provide supporting data and/or justification for below average or outstanding item ratings.

[51 FR 46164, Dec. 23, 1986, as amended at 53 FR 38194, Sept. 29, 1988]

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(d) For items with a shelf-life of less than six months, consideration will be given to use of indefinite type contracts with orders to be placed either (i) directly by the users, or (ii) by central purchasing offices with deliveries direct to users. The clause in FAR 52.213-1 shall be modified to apply only to delivery orders of less than $25,000 if fast pay is desired.

[51 FR 46164, Dec. 23, 1986, as amended 53 FR 38194, Sept. 29, 1988]

216.502 Definite quantity contracts.

(S-70) Advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need to be ordered only after actual needs have materialized;

(3) The obligation of the Government is limited; and

(4) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

[53 FR 38200, Sept. 29, 1988, as amended at 54 FR 7427, Feb. 21, 1989]

216.503 Requirement contracts.

(S-70) Advantages of this type of contract are:

(1) Flexibility with respect to both quantities and delivery scheduling;

(2) Supplies or services need to be ordered only after actual needs have materialized;

(3) When production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(4) Price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and

(5) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

[53 FR 38200, Sept. 29, 1988]

216.506 Ordering.

(c) Orders placed under indefinite delivery contracts may be issued on the DD Form 1155.

[54 FR 30741, July 24, 1989]

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.

216.603-2 Application.

(c) Whether executed on Standard Form 26 or Standard Form 30, a definitized contract will be numbered as a modification of the letter contract as provided in 204.70.

[51 FR 46164, Dec. 23, 1986, as amended 53 FR 38195, Sept. 29, 1988]

216.603-3 Limitations.

Additional limitations on the use of letter contracts by DoD activities can be found in Subpart 217.75.

[52 FR 12388, Apr. 16, 1987 and 53 FR 38200, Sept. 29, 1988]

Subpart 216.7—Agreements

216.702 Basic agreements.

(b)(3) To minimize modification, regulatory revisions involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required modifications of basic agreements and to the extent possible, modifications will be required only in matters resulting from changes in statutes or Executive orders.

(b)(S-70) A basic agreement shall be used to cover all subsequent procurements which fall within its scope. Provisions of the basic agreement, including supplements thereto, shall be incorporated into the formal contractual document covering the particular procurement by referring therein to the number of the basic agreement and each of its supplements. The reference "Basic Agreement No. ____ as amended," shall not be used.

(b)(S-75) If a letter contract has been entered into under a basic agreement which thereafter was superseded by a new basic agreement, or amended by supplemental agreement, the contractual instrument which definitizes such letter contract shall incorporate the superseding basic agreement or supplemental agreement, as applicable. If the basic agreement has been terminated without being superseded, or has expired, the definitive contract which supersedes the letter contract shall incorporate the clauses required by statute, Executive Order, or this Regulation.

(S-70) *Content and form.* Basic agreements shall contain a set of "General Provisions." These general provisions shall include two groups of clauses. The first group, identified as "Part A", shall include all of the clauses made mandatory by statute, Executive order, the FAR and this Supplement, for use in negotiated Government contracts, and shall be made a part of each formal contractual document. The second group, identified as "Part B", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances.

BASIC AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ______

This Agreement is entered into as of the ______ day of ______ 19__ between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, ______ and ______, a corporation organized and existing under the laws of the State of ______, herein called "Contractor."

The clauses and provisions of Parts A and B hereinafter set forth have been agreed upon by the parties hereto for use in negotiated ______ type contracts and in letter contracts contemplating conversion to ______ type contracts, between parties, entered into on or after the date of this Agreement, and prior to its termination. It is further agreed that (i) the clauses and provisions set forth in Part A are mandatory clauses and shall, by reference or attachment, be incorporated in each contract awarded pursuant to this Agreement, and (ii) the clauses and provisions set forth in Part B are to be similarly incorporated in such contracts only when applicable and agreed to by the parties for each individual contract.

This Agreement, including Parts A and B hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment or addition to this Agreement which is required by statute, Executive order, or the FAR and this Supplement. No deletion, modification, addition to, or termination of, this Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated by reference.

This Agreement shall be reviewed, as a minimum, annually before the anniversary of its effective date, and revised to conform with all requirements of statutes, Executive orders, or the FAR and this Supplement. This revision shall be evidenced by an agreement modifying this Basic Agreement or by the issuance of a superseding Basic Agreement.

This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In Witness Whereof, the parties hereto have executed this Agreement as of the day and year first above written:

United States of America
By ______
(Contracting Officer)
______
(Name of Company)
By ______
______
(Title)

[51 FR 46164, Dec. 23, 1986, as amended 53 FR 38195, Sept. 29, 1988]

216.703 Basic ordering agreements.

(c) *Limitations.* The clause in FAR 52.213-1 shall be modified to apply only to orders of less than $25,000 when fast pay is desired on orders less than $25,000.

(c)(S-70) [Reserved]

(c)(S-71) To minimize modifications, regulatory revisions involving changes in authorized contract clauses, utilized in basic ordering agreements shall provide appropriate direction with respect to any required modifications of basic ordering agreements; and, to the extent possible, modifications shall be required only in matters resulting from changes in statutes, or Executive Order.

(c)(S-72) The basic ordering agreement shall list one or more activities which are authorized to issue orders under the agreement. Any activity so named may issue orders specifying the supplies or services required. Orders shall be issued on DD Form 1155 or Standard Form 26 and shall incorporate by reference the provisions of the basic ordering agreement.

(c)(S-73) Individual orders under a basic ordering agreement shall be individually closed following physical completion of each order in accordance with FAR 4.804.

(c)(S-74) The period during which orders may be placed against a BOA may not exceed three years. Extensions may be granted with the approval of the Chief of the Contracting Office for up to two years, but no single extension shall exceed one year.

(d)(1)(S-70) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of all limitations of this section.

(d)(1)(S-71) If a contract administration office is authorized to issue orders (see FAR 42.202(c)), that office shall be provided a copy of the synopsis required by FAR 5.201(a), or a copy of the exception determination specified at FAR 5.202(a) or (b), and a copy of the justification and appropriate approvals required by FAR 6.303 and 6.304.

(d)(3)(ii) However, incentive provisions consistent with this part are permitted.

[51 FR 46164, Dec. 23, 1986, as amended at 52 FR 12388, Apr. 16, 1987; 53 FR 38195, 38200, 38246, Sept. 29, 1988]

PART 217—SPECIAL CONTRACTING METHODS

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46173, Dec. 23, 1986, unless otherwise noted.

Subpart 217.1—Multiyear Contracting

217.101 Definitions.

Property, as used in this subpart means items of supplies, including but not limited to systems, subsystems, major equipment, components, parts, materials, supplies, and the advance acquisition thereof, and commercial and noncommercial items.

217.102 Policy.

217.102-2 General.

(a) Multiyear contract quantities are budgeted for and financed in accordance with the applicable program year as reflected in the DoD Five-Year Defense Program.

217.102-3 Objectives.

(a)(S-70) Implementation of the industrial preparedness program for planned items with planned producers;

(d)(4) The decision not to request dual proposals must also take into account the determinations required by 217.103-1(b) (S-70) or (S-71).

217.103 Procedures.

217.103-1 General.

(a)(1) The use of such a contract will promote the national security of the United States.

(b)(1) For exceptions to this paragraph see 217.104-70 for multiyear contracting of specified services, and 217.104-71 for multiyear contracting of supplies and services of the maintenance and operation of family housing.

(b)(S-70) A multiyear contract may not be executed in the case of services, until a written determination has been made by the HCA or his designee that (i) there will be a continuing requirement for the services and incidental supplies, consonant with current plans for the proposed contract period; (ii) the furnishing of such services and incidental supplies will require a substantial initial investment in plant or equipment or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force, or other substantial startup costs; and (iii) the use of such a contract will promote the best interest of the United States by encouraging effective competition and promoting economies of operation.

(b)(S-71) A multiyear contract may not be executed in the case of property, until a written determination has been made by the Secretary or designee that the criteria specified in FAR 17.103-1 have been met.

(d)(1) Such ceilings shall be expressed in the schedule and shall be a not-to-exceed amount to apply alike to all bidders or offerors.

217.103-2 Solicitations.

Solicitations for multiyear contracts should be appropriately structured to reflect any selected variations to standard multiyear techniques allowed by FAR 17.102-3(d).

217.103-4 Awards.

(c) Prior to award of a multiyear contract, the contracting officer shall verify that findings made in accordance with 217.103-1(b) (S-70) or (S-71) remain valid and shall annotate the findings document accordingly.

217.103-70 Funding of multiyear contracts.

Section 2306(h) of Title 10 of the U.S. Code and annual appropriations acts for the Department of Defense have established the various restrictions, controls and reporting requirements regarding multiyear contracts in paragraphs (a) through (f) below; paragraphs (g) and (h) provide additional guidance.

(a) A 30-day advance notification to the Committees on Armed Services and on Appropriations of the Senate and House of Representatives shall be provided by the Secretary prior to the award of any multiyear contract that:

(1) Contains a cancellation ceiling in excess of $100 million; or

(2) Provides for economic order quantity purchases in excess of $20 million in any year; or

(3) Includes an unfunded contingent liability in excess of $20 million.

(b) A similar notification to that described in paragraph (a) shall also be given prior to the award of any contract for advance procurement leading to a multiyear contract with an economic order quantity procurement in excess of $20 million in any year.

(c) Copies of the notifications required in paragraphs (a) and (b) shall be submitted to the Deputy Assistant Secretary of Defense (OASD(P&L) (Procurement)), and Deputy Assistant Secretary of Defense, OASD(C)(P/B). Departments shall establish reporting procedures.

(d) No multiyear contract may be awarded for which the economic order quantity advance procurement is not funded at least to the limits of the Government's liability.

(e) No multiyear contract in excess of $500 million for any system or component thereof shall be initiated unless specifically provided for in an appropriation act for the DoD.

(f) Departments shall also comply with any restrictions or notification requirements contained in annual authorization or appropriation acts.

(g) The planning and coordination of multiyear acquisition strategies should begin sufficiently early to permit required integration of the acquisition into the Planning Programming and Budgeting System (PPBS). The degree of integration and the extent of data required will vary with the type and size of the program. Guidelines shall be included, as required, in DoD and Service instructions for preparing program objective memoranda (POM) submissions and budget estimate submissions (BES).

(h) Policies and procedures for the funding of acquisitions within the procurement title of the DoD Appropriation Act are contained in DoD Directive (DoDD) 7200.4, Full Funding of DoD Procurement Programs.

[51 FR 46173, Dec. 23, 1986, as amended 53 FR 38242, Sept. 29, 1988]

217.104 Related areas.

217.104-70 Multiyear contracting of services under Pub. L. 90-378.

(a) Under Pub. L. 90-378 (10 U.S.C. 2306 (g)), the Department of Defense is authorized to enter into multiyear acquisitions for the following listed services, to obtain requirements which are not in excess of the Five-Year Defense Program and for which funds are limited by statute for obligation during the fiscal year in which the contract is executed:

(1) Operation, maintenance, and support of facilities and installations;

(2) Maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;

(3) Specialized training necessitating high quality instructor skills (for example, pilot and other aircrew members; foreign language training); and

(4) Base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal). However, such acquisitions shall be entered into for no more than a 5-year period and only when such acquisitions are consistent with the policies of and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October-30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout Sup 217.104-70 shall be considered to mean "fiscal year".

217.104-71 Multiyear acquisition of supplies and services under Pub. L. 91-142.

(a) Under section 512 of Pub. L. 91-142, the Department of Defense is authorized to enter into contracts for periods of no more than 4 years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such acquisitions shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in FAR 17.101 through 17.105. The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October-30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" shall be considered to mean "fiscal year".

Subpart 217.2—Options

217.200 Scope of Subpart.

10 U.S.C. 2301(a)(7) provides that an IFB shall not include a provision for the evaluation of options, unless it has been determined that there is a reasonable likelihood that the options will be exercised. This requirement shall be observed whenever option evaluation provisions are included within IFBs, notwithstanding the exceptions contained in FAR 17.200. See FAR 17.208 (b) and (c)(4).

[53 FR 38243, Sept. 29, 1988]

217.202 Use of options.

(S-70) See Subpart 217.75 for limitations on the use of undefinitized contract actions.

[52 FR 12388, Apr. 16, 1987 and 53 FR 38200, Sept. 29, 1988]

217.203 Solicitations.

(a)(S-70) When the contracting officer either knows or anticipates that the option may be appropriate to fulfill Foreign Military Sales (FMS) commitments, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the FMS country (countries) and its (their) requirements.

(S-71) When the contracting officer either knows or anticipates that an option may be appropriate to fulfill FMS requirements but the specific country or countries are not identified, the solicitation shall advise contractors that the U.S. Government will subsequently identify the foreign country for the purpose of negotiating any equitable price adjustment for cost or profit considerations attributable to the option if exercised for FMS requirements (see 217.208(S-70)(2)).

(S-72) Such notification shall not be placed in solicitations for the establishment or replenishment of DoD inventories or stocks or acquisitions made under DoD Cooperative Logistics Support Arrangements.

(g)(2) The Chief of the Contracting Office is the person authorized to make the approval cited in FAR 17.203(g)(2).

217.204 Contracts.

(e) The approving authority for actions under FAR 17.204(e) is the Chief of the Contracting Office. This approval authority shall not be delegated.

[53 FR 50415, Dec. 15, 1988]

217.207 Exercise of options.

(c)(2) An FMS commitment undertaken by the United States Government on behalf of a foreign country constitutes the type of need described in FAR 17.207(c)(2). In such cases, the contract shall expressly provide for the Government's right to exercise the option for FMS purposes (see 217.203(a)).

217.208 Solicitation provisions and contract clauses.

(S-70) *FMS option.* (1) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are able to negotiate a price in advance, insert the clause at 252.217-7000, Exercise of Option to Fulfill Foreign Military Sales Commitments, if a clause at FAR 52.217-6, 52.217-7, 52.217-8, or 52.217-9 is included in the contract.

(2) When the contracting officer either knows or anticipates that a contract option may be exercised to fulfill FMS requirements (see 225.7309) and the parties are unable to negotiate any additional cost or profit considerations attributable to Foreign Military Sales until a specific country or countries are subsequently identified, the clause at 252.217-7001, Exercise of Option to Fulfill Foreign Military Sales Commitment. (Alt. 1) shall be inserted if a clause at FAR 52.217-6, 52.217-7, 52.217-8, or 52.217-9 is included in the contract.

Subpart 217.4—Leader Company Contracting

217.401 General.

217.401-70 Consideration of small disadvantaged business concerns.

When leader company contracting is to be considered, special effort will be taken to select a small disadvantaged business (SDB) concern as the follower company. Where other than an SDB is selected as the follower company, the contracting officer shall document the contract file to reflect the extent of actions taken to identify SDB concerns for participation in the acquisition, and the rationale for selection of a non-SDB as the follower company.

[55 FR 19077, May 8, 1990]

Subpart 217.5—Interagency Acquisitions Under the Economy Act

217.502 General.

(a) For purposes of FAR 17.502, the designee of the head of the requesting agency within DoD is the contracting officer unless otherwise directed by departmental regulations.

(b) Except as provided in FAR 7.3, it is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources.

(c) An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more economically by private contractors.

217.503 Determination requirements.

(b) In addition to the requirements of FAR 17.503(b), the determination shall also include a finding that the services cannot be performed as conveniently or more economically by private contractors.

217.504 Ordering procedures.

(b) Invitations for bids and requests for proposals shall not be sent to Government agencies. Orders for supplies and services placed within a department shall be in accordance with procedures prescribed by that department. Delivery orders may be placed on DD Form 1155.

Subpart 217.6—Management and Operating Contracts

The provisions of FAR Subpart 17.6 are not applicable within DoD.

Subpart 217.70—Exchange of Personal Property

217.7000 Scope of Subpart.

This part prescribes contracting policy and procedures governing the use by Department of Defense components of the exchange authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)), when exchange is accomplished concurrently with procurement. The act authorizes the exchange of personal property and the application of the exchange allowance to the acquisition of similar property. Exchange policy, authority, applicability, and limitations are governed by the Federal Property Management Regulations issued by the Administrator for General Services, and by Department of Defense Instruction 4140.51, "Exchange of Nonexcess Personal Property in the Department of Defense."

217.7001 Definitions.

"Exchange (trade-in) property" means property not in excess of the needs of the owning DoD component, but eligible for replacement because of obsolescence, unserviceability, or other valid reason, that is exchanged and applied as whole or partial payment allowance toward the acquisition of similar items.

"Similar items" in exchange transactions means both the item being acquired and the item being replaced. Both must fall within one of the single generic categories listed in 217.7003-1, and the item being acquired must be designed and constructed for the same specific purpose as the item being replaced.

217.7002 Policy.

It is DoD policy to use exchange processing for replacing eligible nonexcess items. It shall be used to the maximum extent possible when such transactions foster the economical and efficient accomplishment of an approved program.

217.7003 Categories of property eligible for exchange and categories of property ineligible for exchange.

217.7003-1 Property eligible for exchange.

Nonexcess personal property in the categories listed below is eligible for exchange. However, in the exchange of such property, both the item to be acquired and the item to be replaced must fall within a single number category. Categories of property not listed below or not included in 217.7003-2 are also eligible for exchange if designed and constructed for the same specific purpose.

1. Agriculture products, processed foods, and forage
2. Ammunition and ammunition components
3. Animals and animal products
4. Batteries, storage
5. Cards, tabulating
6. Ditching machines
7. Dozer blades
8. Drill presses
9. Drugs, biologicals, and official reagents
10. Earth augers
11. Graders, self-powered and towed
12. Lathes
13. Machines, adding and calculating
14. Machines, addressing and mailing
15. Machines, dictating and transcribing
16. Machines, duplicating
17. Machines, punched card, bookkeeping, tabulating, and accounting
18. Milling machines
19. Mixers, concrete, portable or truck mounted
20. Pile drivers
21. Plows, snow, motor
22. Refrigeration and air conditioning components (FSC 4130 only and this authority expires 31 December 1986)
23. Road rollers, wheeled and sheepsfoot
24. Saws, circular or band
25. Scrapers, earth moving, self-powered
26. Scrapers, earth moving, towed
27. Sedans, station wagons, coupes, limousines
28. Shovels, power
29. Spreaders, aggregate and line
30. Tractors, warehouse
31. Tractors, wheeled or crawler, with or without special attachments, up to 65 h.p.
32. Tractors, wheeled or crawler, with or without special attachments, 65 h.p. and up
33. Trailers, general purpose, multiple axle
34. Trailers, general purpose, single axle
35. Trailers, tank mounted
36. Trucks, forklift

37. Trucks, general purpose, cargo and construction, 12,500 GVW and up (including truck tractors, dump, and multiple drive)
38. Trucks, general purpose and utility, up to 12,500 GVW (including suburbans, carryalls, and sedan deliveries)
39. Trucks, straddle
40. Trucks, tank (special purpose truck on which the tank is integral part of the construction)
41. Trucks, warehouse, platform, electric and gasoline powered
42. Typewriters, manual and electric

217.7003-2 Property ineligible for exchange.

Items that are found in any of the FSCGs listed below are not eligible for handling under exchange procedures without the prior approval of the General Services Administration (such approval shall accompany the purchase request):

10 Weapons
11 Nuclear ordnance
12 Fire control equipment
14 Guided missiles
15 Aircraft, and airframe structural components *
16 Aircraft components and accessories *
17 Aircraft launching, landing, and ground handling equipment
20 Ship and marine equipment
22 Railway equipment
31 Bearings
32 Woodworking machinery and equipment, except lathes, milling machines, and saws, circular or band
34 Metalworking machinery, except drill presses, lathes, milling machines, and saws, circular or band
40 Rope, cable, chain, and fittings
41 Refrigeration and air conditioning equipment **
42 Fire fighting, rescue, and safety equipment
44 Furnace, steam plant, and drying equipment; and nuclear reactors
45 Plumbing, heating, and sanitation equipment
46 Water purification and sewage treatment equipment
47 Pipes, tubing, hoses, and fittings
48 Valves
51 Hand Tools
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood, and veneer
56 Construction and building materials
68 Chemicals and chemical products, except medicinal chemicals
71 Furniture
75 Office supplies and devices, except cards, tabulating
83 Textiles, leather, and furs
84 Clothing and individual equipment

217.7004 Procedures.

217.7004-1 Offering property for exchange.

(a) Sale of nonexcess personal property is not authorized pursuant to this part. The objective in exchanging nonexcess personal property shall be to acquire new property from an offeror whose offer will be most advantageous to the Government, price and other factors considered. When acquiring new property concurrent with offering exchange property, either sealed bidding or negotiation shall be used as appropriate (see FAR part 6), except that when the personal property is required to be acquired against a mandatory Federal Supply Schedule Contract, the property shall be acquired against such contract, regardless of whether the exchange can be effected under such contract.

(b) The following notation shall be included in the solicitation:

> The property described in item number(s) ________, is being offered in accordance with the exchange provisions of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c)).

(c) A minimum of 14 calendar days should be allowed in Continental United States (CONUS) for the inspection of property being offered for exchange. For exchanges outside Continental United States, the minimum inspection period should normally be 21 calendar days.

217.7004-2 Purchase request and certification.

In connection with an acquisition involving exchange, the purchase request must be accompanied by a certification that the property is eligible for exchange and complies with all conditions and limitations specified in

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* These line items shall be exchanged directly when the Military Departments rely on a contract with a manufacturer for full spare parts support for commercial type aircraft.

** Except for FSC 4130 items; which may be exchanged (see 217.7003-1).

DODI 4140.51 including a written administrative determination of economic advantage which shall indicate—

(a) The anticipated economic advantage to the Government resulting from the use of the exchange authority.

(b) That exchange allowances shall be applied toward or in partial payment for the items to be acquired.

(c) That if required, the exchange property has been rendered safe or innocuous, or has been demilitarized.

217.7005 Exchange of exchange property.

Each solicitation listing exchange property, in addition to asking for prices for the new items being acquired, shall request offers in terms of exchange (trade-in allowance) for the exchange property listed. The solicitation shall provide for award(s) which are in the best overall interest of the Government. Exchanges may only be effected with the successful offeror. Thus, if the lowest net price to the Government of the property to be acquired (i.e., the price of the new property less the amount offered for the exchange property) results from an offer by a supplier of the new property who agrees to accept the exchange property as a trade-in, a single award would be made which would cover both the acquisition by the Government of the new property and the disposal of the exchange property by trade-in. If, however, the lowest net price to the Government results from a low offered price from a supplier of the new property, without exchange of the exchange property, award shall be made to the low offeror to purchase the new property and the exchange shall not be made.

Subpart 217.71—Master Agreement for Repair and Alteration of Vessels

217.7100 Scope of subpart.

Acquisition policies and procedures applicable to the Master Agreement for Repair and Alteration of Vessels are set forth in this part.

217.7101 Definitions.

(a) Master Agreement for Repair and Alteration of Vessels—The Master Agreement is not a contract and contains no statement of work. It is a written compilation of both required clauses and clauses used as applicable which establishes in advance the terms and conditions upon which a contractor will effect repairs, alterations, and/or additions to vessels, under the provisions of job orders awarded by contracting activities from time to time. The clauses comprising the Master Agreement for Repair and Alteration of Vessels are set forth in 217.7104.

(b) Job Order—A fixed price contract entered into with a contractor which has previously executed a Master Agreement for Repair and Alteration of Vessels. The job order applies to a specific acquisition and sets forth the scope of work, price, delivery date, and additional matters peculiar to the requirements of the specific acquisition. The job order incorporates by reference or appends the clauses of the Master Agreement as required or applicable.

217.7102 Policy.

(a) The Master Agreement for Repair and Alteration of Vessels shall be entered into with all prospective contractors located within the United States, its possessions, or Puerto Rico, which request ship repair work and which possess the organization and facilities to perform such work satisfactorily. Issuance of the Master Agreement for Repair and Alteration of Vessels does not constitute approval of the contractor's facilities for any particular acquisition.

(b) When using the Master Agreement for Repair and Alteration of Vessels in work with prospective contractors located outside the United States, its possessions, or Puerto Rico, the applicable portions of 217.7104 shall be used as a guide.

(c) The Government may from time to time desire to issue job orders under the Master Agreement for Repair and Alteration of Vessels to effect repairs, alterations, and/or additions to vessels belonging to foreign governments.

Vessels of a foreign government will be treated as if they were vessels of the United States Government, whenever so requested by the contracting officer. The IFB, RFP, or RFQ and job order will identify the vessel and the foreign government.

217.7103 Procedures.

217.7103-1 Content and format.

The Master Agreement for Repair and Alteration of Vessels shall contain a set of "Contract Clauses". These contract clauses shall be classified into two groups. The first group, identified as part 217.7104(a), shall include all clauses made mandatory by statute, Executive order, or the Federal Acquisition Regulation, and shall be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels. The second group, identified as part 217.7104(b), shall include those clauses to be incorporated into job orders awarded under the Master Agreement for Repair and Alteration of Vessels, as applicable. The format set forth below may be adapted to fit specific circumstances.

MASTER AGREEMENT FOR REPAIR AND ALTERATION OF VESSELS

This AGREEMENT is entered into this ___ day of ________ 19__ by the UNITED STATES OF AMERICA, hereinafter called the "Government", represented by the Contracting Officer, ________, and ________, a corporation organized and existing under the laws of the State of ________, hereinafter called the "Contractor". The clauses of the Federal Acquisition Regulation (FAR) and the Department of Defense (DoD) FAR Supplement, as set forth herein, have been agreed upon by the parties hereto for use in Invitations for Bids, Requests for Proposals, Requests for Quotations, and/or Job Orders to effect repairs, alterations, and/or additions to vessels, issued by the Government from time to time under this Agreement. It is further agreed that the clauses set forth in DoD FAR Supplement 217.7104(a) are mandatory and shall, by reference or attachment, be incorporated in each job order awarded pursuant to this Agreement.

This Agreement may be cancelled by either party upon thirty (30) days written notice without affecting rights and liabilities under any job order existing at the time of cancellation; *Provided, however,* that the Contractor shall perform and complete under the terms hereof all work covered by any job order entered into hereunder prior to the effective date of cancellation, as such job order may be modified by any change order issued under Clause 252.217-7101 entitled *Changes,* hereof.

This Agreement may be modified only by mutual agreement of the parties. However, the Government has the right to cancel this Agreement upon thirty (30) days written notice at any time the parties fail to agree upon any modification to this Agreement which is required by statute, Executive order, the Federal Acquisition Regulation, or the DoD FAR Supplement. A modification of this Agreement shall not affect any job order in existence at the time of modification, unless the parties so agree.

The rights and obligations of the parties to this Agreement shall be subject to and governed by the provisions of this Agreement, the provisions of job orders issued hereunder, and the drawings, design plans, and specifications. To the extent of any inconsistency between this Agreement and any job order, including any drawings, design plans, and specifications, the provisions of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA
By ________________
(Contracting Officer)
____
(Contractor)
By ________________
(Title)

217.7103-2 Period of agreement.

Either party to the Agreement shall have the right to cancel it without affecting the rights and liabilities under any job order in existence at the time of cancellation by giving 30 days written notice; *Provided,* however, that the contractor shall perform and complete under the terms thereof all work covered by any job order, and any modifications thereto, entered into prior to the effective date of cancellation. The Master Agreement for Repair and Alteration of Vessels will remain in force until cancelled by either party thereto.

217.7103-3 Inviting bids, proposals, or quotations for job orders.

(a) When a requirement arises for the type of work covered by the Master Agreement for Repair and Alteration of Vessels within the United States, bids, proposals or quotations will be solicited from prospective contractors which have previously executed a Master Agreement for Repair and Alteration of Vessels and from prospective contractors which possess the necessary qualifications to perform the work and agree to execute a Master Agreement for Repair and Alteration of Vessels before award of a job order.

(b) The contracting officer shall ensure that solicitations are prepared in the Uniform Contract Format and in accordance with FAR Part 14, Subpart 14.2 or Part 15, Subpart 15.4 as applicable. Solicitations shall include the clauses in 217.7104(a) and, as applicable, the clauses in 217.7104(b). Whenever the Government shall invite the contractor to submit a bid or proposal for the repair, completion, alteration of or addition to a vessel, the contracting officer shall notify the contractor in reasonable detail of (1) the nature of the work to be performed, (2) the date the vessel will be available to the contractor, and (3) the date the work is to be completed. Whenever bulk ammunition is aboard the vessel, the notice shall so state. Unless the notice otherwise states, bids or proposals shall be submitted on the basis that the work will be performed at the contractor's site.

(c) In the event that the contractor is willing and able to perform the work, the contractor, where practicable, shall be afforded an opportunity to inspect the items of work to be accomplished on such vessel, and the contractor shall submit a bid, proposal, or quotation as requested by the contracting officer for the performance of the work as set forth in the solicitation. If the contracting officer requests the contractor to negotiate, the contractor shall submit a proposal which shall include a breakdown of the price in such form and supported by such reasonable detail as the contracting officer may request, but in any case indicating at a minimum the amount proposed for (1) direct labor, (2) material, (3) overhead, and (4) contingencies and profit.

217.7103-4 Pre-Award survey.

In addition to the procedures set forth in FAR 9.104 for making the determination called for by FAR 9.100, the contracting officer may make, before awarding a job order, a preaward survey of the contractor's operations, including any analysis of the contractor's proposed subcontractors, to insure the adequacy and suitability of facilities, including safety standards and adequacy of fire protection, adequacy of facilities for the health, comfort, and welfare of the crew of the vessel, and adequate plant protection to safeguard the vessel and Government property.

217.7103-5 Award of a job order.

After the receipt and evaluation of bids or proposals and selection of the contractor, the price for the work and other pertinent data shall be set forth in a job order (SF 26, SF 33). This job order, by its terms, is subject to the provisions of the Master Agreement for Repair and Alteration of Vessels. When the acquisition has been made under sealed bid procedures, issuance of a job order, signed by the contracting officer only, constitutes an award. When the procurement has been negotiated, the job order must also be signed by the contractor and returned to the contracting officer.

217.7103-6 Emergency work.

Under the following circumstances, the contracting officer, without inviting bids or proposals, may issue a written order for work to a contractor who has previously executed a Master Agreement for Repair and Alteration of Vessels: (a) when a vessel, its cargo, or stores would be endangered by delay in the performance of necessary repair work, or (b) when military necessity requires immediate work on a vessel. As soon as practicable after the issuance of such an order, the parties are required by the Master Agreement for Repair and Alteration of Vessels to negotiate a price for the work. When agreement is reached upon a price, the contracting officer will issue a job order pricing the work.

217.7103-7 Repair costs not readily ascertainable.

If the nature of any repairs is such that their extent and probable costs are not readily ascertainable, the contracting officer may issue a job order on a negotiated or sealed bid basis, to determine the nature and extent of required repairs. The job order shall provide that upon such determination, the contractor, if requested by the contracting officer, shall negotiate prices for the performance of such work as the contracting officer may deem necessary to accomplish the repairs. The prices so agreed upon shall be set forth in a modification to the job order.

217.7103-8 Modification of master agreements for repair and alteration of vessels.

Whenever the Federal Acquisition Regulation and/or the DoD FAR Supplement is revised, the Master Agreement shall also be revised to incorporate all changes made necessary by the revision.

217.7104 Contract clauses.

(a) The contracting officer shall insert the following required clauses in all job orders awarded under the Master Agreement for Repair and Alteration of Vessels:

(1) 252.217-7100 Definitions.

(2) 252.217-7101 Changes.

(3) 252.217-7102 Extras.

(4) 252.217-7103 Job Orders and Compensation.

(5) 252.217-7104 Inspection and Manner of Doing Work.

(6) 252.217-7105 Title.

(7) 252.217-7106 Payments.

(8) 252.217-7107 Assignment of Claims.

(9) 252.217-7108 Bonds.

(10) 252.217-7109 Federal, State, Local and Foreign Taxes.

(11) 252.217-7110 Default.

(12) 252.217-7111 Disputes.

(13) 252.217-7112 Performance.

(14) 252.217-7113 Access to Vessel.

(15) Reserved.

(16) Reserved.

(17) Reserved.

(18) 252.217-7117 Equal Opportunity Clause.

(19) 252.217-7118 Officials Not to Benefit.

(20) 252.217-7119 Covenant Against Contingent Fees.

(21) 252.217-7120 Termination for Convenience of the Government.

(22) 252.217-7121 Authorization and Consent.

(23) 252.217-7122 Notice and Assistance Regarding Patent and Copyright Infringement.

(24) 252.217-7123 Responsibility for Inspection.

(25) 252.217-7124 Liability and Insurance.

(26) 252.217-7125 Pricing of Adjustments.

(27) Reserved.

(28) Reserved.

(29) 252.217-7128 Clean Air and Water.

(30) 252.217-7129 Invoices.

(31) 252.217-7130 Guarantees.

(32) 252.217-7131 Discharge of Liens.

(33) 252.217-7132 Department of Labor Safety and Health Regulations for Ship Repairing.

(b) The Contracting Officer shall insert the following clauses in job orders awarded under the Master Agreement for Repair and Alteration of Vessels as applicable.

(1) 252.217-7200 Workers' Compensation and War Hazard Insurance Overseas.

(2) 252.217-7201 Buy American Act and the Balance of Payments Program.

(3) 252.217-7202 Notice to the Government of Labor Disputes.

(4) 252.217-7203 Patent Indemnity.

(5) 252.217-7204 Filing of Patent Applications.

(6) 252.217-7205 Contract Schedule Subline Items Not Separately Priced.

(7) 252.217-7206 Reporting and Refund of Royalties.

(8) 252.217-7207 Rights in Technical Data and Computer Software.

(9) 252.217-7208 Military Security Requirements.

(10) 252.217-7209 Utilization of Small Business and Small Disadvantaged Business Concerns.

(11) 252.217-7210 Examination of Records by Comptroller General.

(12) 252.217-7211 Gratuities.

(13) 252.217-7212 Convict Labor.

(14) 252.217-7213 Priorities and Allocations.

(15) 252.217-7214 Utilization of Labor Surplus Area Concerns.

(16) 252.217-7215 Limitation on Withholding of Payments.

(17) 252.217-7216 Equal Opportunity Pre-Award Clearance of Subcontracts.

(18) 252.217-7217 Subcontracts.

(19) 252.217-7218 Government Property.

(20) 252.217-7219 Federal, State, Local, and Foreign Taxes.

(21) Reserved.

(22) 252.217-7221 Price Reduction for Defective Cost or Pricing Data.

(23) 252.217-7222 Duty-Free Entry.

(24) 252.217-7223 Duty-Free Entry of Qualifying Country Supplies.

(25) 252.217-7224 Inspection System.

(26) 252.217-7225 Advance Payments.

(27) 252.217-7226 Required Sources for Jewel Bearings and Related Items.

(28) 252.217-7227 Required Sources for Miniature and Instrument Ball Bearings.

(29) 252.217-7228 Interest.

(30) 252.217-7229 Competition in Subcontracting.

(31) 252.217-7230 Audit by Department of Defense.

(32) 252.217-7231 Subcontractor Cost or Pricing Data.

(33) 252.217-7232 Value Engineering.

(34) 252.217-7233 Reserved.

(35) 252.217-7234 Required Sources for Precision Components for Mechanical Time Devices.

(36) 252.217-7235 New Material.

(37) 252.217-7236 Government Surplus.

(38) 252.217-7237 Utilization of Women-Owned Business Concerns (Over $10,000).

(39) 252.217-7238 Material Inspection and Receiving Report.

(40) 252.217-7239 Protection of Government Buildings, Equipment and Vegetation.

(41) 252.217-7240 Government Delay of Work.

(42) 252.217-7241 Distribution of Defense Subcontracts Placed Overseas.

(43) 252.217-7242 Safety Precautions for Ammunition and Explosives.

(44) 252.217-7243 Cost Accounting Standards.

(45) 252.217-7244 Notification of Changes.

(46) 252.217-7245 Engineering Change Proposals (ECP's).

(47) 252.217-7246 Change Order Accounting.

(48) 252.217-7247 Contracts Conditioned Upon the Availability of Funds.

(49) 252.217-7248 Preference for Domestic Specialty Metals.

(50) 252.217-7249 Preference for United States-Flag Air Carriers.

(51) 252.217-7250 Exclusionary Policies and Practices of Foreign Governments.

(52) 252.217-7251 Hazardous Material Identification and Material Safety Data.

(53) 252.217-7252 Certification of Requests for Adjustment or Relief Exceeding $100,000.

(54) 252.217-7253 Qualifying Country Sources as Subcontractors.

(55) 252.217-7254 Stop Work Orders.

(56) 252.217-7114 Certain Communist Areas.

(57) 252.217-7115 Contract Work Hours and Safety Standards Act—Overtime Compensation.

(58) 252.217-7116 Walsh-Healey Public Contracts Act.

(59) 252.217-7126 Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.

(60) 252.217-7127 Affirmative Action for Handicapped Workers.

(61) 252.217-7255 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

(62) 252.217-7256 Subcontractor Cost or Pricing Data.

(63) 252.217-7257 Notice of Total Small Business Set-Aside.

(64) 252.217-7258 Preference for Labor Surplus Area Concerns.

(65) 252.217-7259 Bid Guarantee.

(66) 252.217-7260 Production Progress Reports.

(67) 252.217-7261 Government-Furnished Property (Short Form).

(68) 252.217-7262 Clauses Incorporated by Reference.

(69) 252.217-7263 Aggregate Pricing Adjustment.

(70) 252.217-7264 Small Business and Small Disadvantaged Business Subcontracting Plan (Master Plans).

(71) 252.217-7265 Restrictive Markings on Technical Data.

(72) 252.217-7266 Identification of Technical Data.

(73) 252.217-7267 Data Requirements.

(74) 252.217-7268 Certain Communist Areas.

(75) 252.217-7269 Plant Protection.

Subpart 217.72—Acquisition of Component Parts

217.7201 Privately developed items.

217.7201-1 General.

It is Department of Defense policy to provide an incentive to industry creativity by honoring the rights in data resulting from private development and by limiting the demands for such data to that which is essential for Government purposes. It is important that the efforts directed toward permitting full and open competition do not demand or use privately developed data in a manner which is contrary to the policies and procedures established in part 227. Accordingly, when the policy stated above produces situations which require the contracting officer to decide whether to procure data for future competitive acquisition, the provisions of part 227, as supplemented by this paragraph, shall govern. For major weapon systems, see also section 207.106.

[51 FR 46173, Dec. 23, 1989, as amended at 54 FR 20592, May 12, 1989; 54 FR 30741, July 24, 1989]

217.7201-2 Specific acquisition methods.

(a) When Defense requirements are for items which are available from more than one source as a result of either licensing, competitive copying, or independent development, the contracting officer shall provide for full and open competition for such items.

(b) When the Government desires to purchase privately developed items but does not have necessary data with unlimited rights for use in a specification for competitive acquisition, the contracting officer shall use one of the following alternative procedures in order of preference (see also 217.7203).

(1) When items of identical design are not required, the contracting officer shall provide for full and open competition using performance or other similar specifications, including purchase descriptions, which do not contain data pertaining to items, components or processes, developed at private expense to which the Government does not have unlimited rights. There are two methods of competitive procurement which may provide items of the same or similar design and suitable performance. One of these is purhcase by two-step sealed bidding. The other is by the use of "brand name or equal" purchase descriptions. To encourage participation by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, contracting activities should consider incorporating a requirement in the IFB or RFP for a bid sample to be used for evaluation purposes only (see 210.004(b)(3)(i)).

(2) When items of design or composition similar or identical to a privately developed item are required and other than full and open competition is authorized under FAR Part 206, procurement should be from the firm which developed or designed the item or process or its licensees, *provided* productive capacity and quality are adequate and price is fair and reasonable.

(3) When additional sources are required for items of design or composition similar or identical to a privately developed item in order to meet total current or mobilization requirements, and the procedures in (1) above cannot practicably be used to create additional sources, the developer should be encouraged to license others to manufacture such items. Procuring activities should also consider the specific acquisition by the Government of the necessary rights in data. When complex technical equipment is involved and the establishment of satisfactory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company acquisition technique (see FAR subpart 17.4).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (i.e. reverse en-

gineering) and used for competitive acquisition. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Contracting Activity.

[51 FR 46173, Dec. 23, 1986, as amended at 54 FR 30741, July 24, 1989]

217.7202 Component breakout.

217.7202-1 Scope of paragraph.

(a) This section sets forth guidance for making decisions on whether or not components should be acquired by the Government directly and furnished to an end item contractor as Government-furnished material, for incorporation in the end item. This paragraph, however, does not pertain to all such decisions, but only to those which deal with whether components that have been included as contractor-furnished material in a previous acquisition of the end item should be "broken out" from a forthcoming end item acquisition for direct Government acquisition. Thus, except as set forth in Part 7, this paragraph does not pertain to the initial Government-furnished equipment/contractor-furnished equipment decisions that must be made at the inception of an acquisition program.

(b) Parts acquired for replenishment are not covered by this paragraph, but are governed by 217.7203 and Supplement 6, Replenishment Parts Breakout Program.

(c) This section applies to acquisitions of weapons systems or other items of major equipment involving components whose direct acquisition by the Government may result in substantial net cost savings over the life of the acquisition program. The term "component", as used in this paragraph, includes subsystems, assemblies, subassemblies, and other major elements of an end item, but does not include elements of relatively small annual acquisition value.

[51 FR 46173, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987]

217.7202-2 Policy.

Whenever it is anticipated that the prime contract for a weapons system or other major end item will be awarded without adequate price competition, and the prime contractor is expected to acquire a component without such competition, it is Department of Defense policy to break out that component if:

(a) Substantial net cost savings will probably be achieved; and

(b) Such action will not jeopardize the quality, reliability, performance or timely delivery of the end item.

The desirability of breakout should also be considered (regardless of whether the prime contract or the component being acquired by the prime contractor is on the basis of price competition) whenever substantial net cost savings will result (1) from greater quantity acquisitions or (2) from such factors as improved logistics support through reduction in varieties of spare parts and economies in operations and training through standardization of design. Primary breakout consideration shall be given to those components of the end item representing the highest annual acquisition costs and offering the largest potential net savings through breakout.

217.7202-3 Responsibility for component breakout selection, review and decision.

The program manager, project manager, project officer, program director, or other official responsible for the material program concerned, supported by a project team (to include the Small Business Specialist, cognizant engineering, production, logistics, maintenance and other appropriate personnel, and the contracting officer or designee), shall be responsible for:

(i) Earmarking as susceptible to breakout those components potentially conforming to the criteria and policy set forth herein;

(ii) Conducting the breakout review and evaluation described in 217.7202-4;

(iii) Making the decision whether or not to break out the component; and

(iv) Preparing records explaining such decisions in compliance with 217.7202-5.

217.7202-4 Breakout guidelines.

(a) Each decision on whether or not to break out a component must embrace (1) assessment of the potential risks of degrading the end item through such contingencies as delayed delivery and reduced reliability of the component, (2) calculation of estimated net cost savings (i.e., estimated acquisition savings less any offsetting costs), and (3) analysis of the technical, operational, logistic and administrative factors involved. As to each of these, the decision must be supported by adequate explanatory information, including an assessment by, and consultation with, the end item contractor when feasible.

(b) In deciding whether a component should be broken out, the guidelines set forth below (in the form of questions) should be considered. Answers will rarely be "positively yes" or "positively no" but usually 'probably yes" or "probably no", with the degree of probability governed by the facts of the particular case. The decisions will depend largely upon the degree and significance of the risks to quality performance, reliability and timely delivery of the end item which would be involved in breakout and upon the estimated net cost savings. Where the risks, if any, are acceptable and breakout is expected to result in substantial net cost savings, the component should be broken out. On the other hand, if such risks are unacceptable, the components should not be broken out. Breakout will normally not be justified for a component whose cost is not expected to exceed $1 million for the current year's requirement.

(1) Are the design of the component (and the design of the end item insofar as it will affect the component) sufficiently stable that further design or engineering effort by the end item contractor in respect to the component is unlikely to be required?

(2) Is a suitable data package available with rights to use it for Government acquisition? (Note that breakout may be warranted even though competitive acquisition is not possible.)

(3) Can any problems of quality control and reliability of the component be resolved without requiring effort by the end item contractor?

(4) Is it anticipated that requirements for technical support (i.e., functions such as development of proposed detailed specifications; development of test requirements to prove design adequacy or compliance with design; monitoring tests to assure compliance with established requirements; definition of quality assurance requirements for production of articles; and analysis and correction of service-revealed deficiencies) heretofore performed by the end item contractor will be negligible? If not, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support, or can such support be obtained from the end item contractor (even though the component is broken out) or other source?

(5) Can breakout be accomplished without causing unacceptable difficulties in logistics support (e.g., by jeopardizing requisite standardization of components)?

(6) Can breakout be accomplished without causing over fragmentation of the end item that might materially impede administration, management, and performance of the end item contract (e.g., by unduly complicating production scheduling or identifying (and fixing responsibility for) end item failure that may be caused by a defective component)?

(7) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(8) If a decision is made to break out a component and to acquire it from a new source, can advance acquisition funds be made available to provide that source any necessary additional lead time?

(9) Is there a source other than the present manufacturer capable of supplying the component?

(10) Has the component been (or is it known that it is going to be) acquired directly by the Government as a support item in the supply system or as GFE in other end items?

(11) Would the financial risks and other responsibilities being assumed by the prime contractor that will have to be assumed by the Government if the item is broken out be acceptable?

(12) Will breakout result in substantial net cost savings? Estimates of

probable savings in cost, should be developed for each case on its own facts, with consideration given to any estimated offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(c) If application of the guidelines in (b) above reveals conditions currently unfavorable to breakout, the feasibility of eliminating such conditions should be considered. For example, where adequate technical support is not available from Government resources, or similar assistance must be obtained in order to successfully accomplish breakout, consideration should be given to the contracting for the necessary services, such as product assurance suitability services, from the end item contractor or other qualified source.

[51 FR 46173, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987]

217.7202-5 Records and review procedure.

The records of the contracting activity shall contain documentation of:

(a) Those components which have been reviewed and determined to have no potential for breakout;

(b) Those components which have been reviewed and earmarked as being susceptible to breakout pursuant to 217.7202-3; and

(c) Those components for which a decision to breakout has been made.

Documentation of these three categories, and for those components once earmarked but no longer considered susceptible to breakout, shall be signed by the cognizant project manager or other designated official and reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. Components that have been earmarked for potential breakout shall be reviewed well in advance of each successive acquisition, with a decision made as to whether the component will be broken out for the ensuing acquisition. Such reviews, made preferably in the course of requirements determination, but in any event before acquisition of the requirement is initiated, shall be repeated until a final decision on whether or not to breakout is reached, and shall be documented. When breakout is delayed or postponed, the documentation shall include a description of the actions required to accomplish breakout, identify the activities responsible for such actions, and indicate the fiscal year when breakout should be effected.

217.7203 Acquisition of parts.

(a) Any part, subassembly, or component (hereinafter called "part") for military equipment, to be used for replenishment of stock, repair, or replacement, must be acquired so as to assure the requisite safe, dependable, and effective operation of the equipment. Where it is feasible to do so without impairing this assurance, parts should be acquired on a full and open competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are acquired from the original manufacturer of the equipment or his supplier, the acquisition should be restricted accordingly, as in the kind of cases described in (c) below. Centrally managed replenishment parts for military systems and equipment (except replenishment parts acquired under other specifically defined initial support programs or acquired through local purchase) are governed by Supplement 6, the Replenishment Parts Breakout Program.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for acquisition purposes (or can be made so available in keeping with the policies in FAR Part 27 are to be acquired on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate acquisition, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in FAR Part 27 to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above. In assessing this assurance, the nature and function of the equipment of which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time.

(e) *Limitations on price increases.* (1) Except as provided in (2) below, the contracting officer shall not purchase or agree to a price for any centrally managed spare or replacement part, on a sole source basis, when the price of such part has increased by 25 percent or more at any time within the most recent 12-month period.

(2) The purchase of such part is permitted notwithstanding a price increase of 25 percent or more provided the contracting officer certifies in writing to the head of a contracting activity before the purchase is made that:

(i) The contracting officer has evaluated the price of such part and concluded that the price increase is fair and reasonable, or

(ii) The national security interests of the United States require that such part be purchased despite the price increase.

(3) If necessary to implement this paragraph (e), contracting officers may require that vendors supply price and quantity data for any government orders issued within the most recent 12 months for the spare or replacement part as part of their response to a solicitation.

(4) The fact that a particular price has not increased by 25 percent in no way relieves the contracting officer of the responsibility for obtaining a fair and reasonable price.

217.7204 Identification of sources of supply.

(a) 10 U.S.C. 2384(a) requires that, whenever practicable, each contract requiring the delivery of supplies, other than commercial items sold in substantial quantities to the general public and priced at established catalog or market prices or awarded through full and open competition, shall require that the contractor identify:

(1) The actual manufacturer or producer of the item or all sources of supply of the contractor for that item;

(2) The national stock number of the item (if there is such a number), and the identification number of the actual manufacturer or producer of the item or of each source of supply of the contractor for the item; and

(3) The source of any technical data delivered under the contract.

This enables contracting officers to obtain sufficient information to allow solicitation of all actual manufacturer(s) of end items, parts, subassemblies and/or components, thereby allowing for enhancing competition and avoiding payment of additional costs where no significant value is added by dealers, distributors and manufacturers other than the actual manufacturer.

(b) This section does not apply to a contract that requires delivery of supplies that are commercial items sold in substantial quantities to the general public if the contract—

(1) Provides for the acquisition of such supplies at established catalog or market prices; or

(2) Is awarded through the use of full and open competition.

(c) The contracting officer shall include the clause at 252.217-7270 in all supply contracts except when:

(1) The contracting officer already has the information required by this clause (for example, the information was obtained as part of the offer or under other acquisitions),

(2) The contract is for subsistence, clothing or textiles, fuels, or supplies purchased and used outside the United States;

(3) The contracting officer determines that it would not be practicable to require the contractor to provide the information, e.g., nonrepetitive local purchases;

(4) The contracting officer determines that paragraph (b) is applicable to all items under the contract.

(d) The contracting officer may include the clause at 252.217-7270 in service contracts requiring the delivery of supplies when appropriate.

[51 FR 46173, Dec. 23, 1986, as amended at 52 FR 11077, Apr. 7, 1987; 52 FR 34788, Sept. 15, 1987]

217.7205 Spares acquisition integrated with production (SAIP).

217.7205-1 Scope.

This section prescribes policy and procedures for implementing SAIP in selected acquisitions.

[54 FR 7427, Feb. 21, 1989]

217.7205-2 Definition.

Spares Acquisition Integrated with Production (SAIP) is a technique used to acquire spare and/or repair parts combined with procurement of identical items produced for the primary system, subsystem, or equipment.

[54 FR 7427, Feb. 21, 1989]

217.7205-3 Policy.

SAIP shall be considered for the acquisition of spare and/or repair parts when the end item will be or is in production. DoDI 4245.12, Spares Acquisition Integrated with Production (SAIP), explains the criteria to be considered by DoD acquisition managers in selecting items for SAIP applications.

[54 FR 7427, Feb. 21, 1989]

217.7205-4 Procedures.

When SAIP applies, it shall be included in the contract and subcontracts as deemed appropriate along with any special provisions needed to tailor the acquisition for administering the SAIP Program.

(a) Full-scale development contracts may require the contractor to:

(1) Recommend SAIP candidates by preparing and submitting a Recommended Spare Parts List (RSPL) for SAIP. This list must be submitted in sufficient time to allow the Government to process and integrate orders;

(2) Plan for production rate tooling to provide for spares requirements; and

(3) When submitting the RSPL, identify those items that can be ordered directly from the actual manufacturer. Such items are candidates for direct procurement by the Government.

(b) Production solicitations and contracts may require the contractor to:

(1) Update or submit information in (a) above;

(2) Identify SAIP ordering windows;

(3) Combine material orders and manufacturing actions for SAIP items with material orders and manufacturing actions for identical items used in the production of a system or subsystem when a firm order for SAIP items is received.

[54 FR 7428, Feb. 21, 1989]

Subpart 217.73—Special Commodities

217.7301 Bakery and dairy products contracts.

217.7301-1 Scope.

This section sets forth special policies and requirements for acquisiton of perishable bakery and dairy products.

217.7301-2 Plant locations.

Prior to award of a contract for perishable bakery or dairy products the contractor must identify the plant or plants at which any manufacturing or processing will occur and from which shipment will be made. The plants named by the successful contractor shall be listed in the Schedule.

217.7301-3 Chemical and microbiological requirements (fresh dairy foods).

(a) *Chemical requirements.* Fresh dairy foods shall meet the chemical requirements for each fresh dairy food specification cited in the contract on the date of award.

(b) *Microbiological requirements.* Milk and milk products as defined in DLAM 8200.1, shall meet microbiological requirements stated in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(c) *Cultured products.* Cultured products shall meet the coliform requirements as specified in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(d) *Solicitation and contract requirements.* The requirements of (a), (b) and (c) above shall be expressed in solicitations and contracts for fresh dairy products.

217.7301-4 Containers and equipment (milk dispensing).

If the contractor is to furnish cabinets for dispensing milk from bulk containers, a notice so stating shall be included in the Schedule of solicitations and resultant contracts. The notice shall state (a) the number of dispenser cabinets required, or a reasonably accurate estimate thereof, (b) whether metal stands for the cabinets are required, (c) the number of cabinets required with a capacity of two containers each, and (d) the number required with a capacity of three containers each.

217.7301-5 Contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts for perishable bakery and dairy products when an indefinite delivery type contract (see FAR 16.5) is to be used.

(1) 252.217-7300, Delivery Vehicles.

(2) 252.217-7301, Time of Delivery. When an indefinite quantity contract is to be used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(3) 252.217-7302, Change in Plant Location, (see 217.7301-2).

(4) 252.217-7303, Sanitary Conditions. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause as modified by its Alternate I.

(5) 252.217-7304, Remedies Under Delivery Orders. When delivery orders are to be placed by an activity other than the activity which awarded the contract, and in order to establish authority in the ordering officer under the Changes, Extras, Inspection, Default (Fixed Price Supply and Service), and Disputes clauses, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and indefinite delivery contracts for perishable dairy products.

(1) 252.217-7305, Examination and Testing.

(2) 252.217-7306, Deficiency Adjustment. The formulas prescribed in the clause may be modified to accommodate purchasing or ordering activities which do not have access to the De-

partment of Agriculture reports cited therein.

(3) 252.217-7307, Warning.

(4) 252.217-7308, Suspension. When an indefinite quantity contract is used, rather than a requirements contract, the contracting officer shall use the clause with its Alternate I.

(5) 252.217-7309, Default.

(6) 252.217-7310, Reinstatement.

(c) The contracting officer shall insert the clause at 252.217-7311, Code Dating, in solicitations and indefinite delivery type contracts for perishable bakery and dairy products when a Schedule or specification provision requires the labels of one or more items to show the date of pasteurization, manufacture, production, or processing, and in order to permit the use of a coding system.

(d) The contracting officer shall insert the clause at 252.217-7312, Marking, in solicitations and indefinite delivery contracts for perishable bakery and dairy products except when a provision is inserted in the Schedule specifically requiring supplies to be marked in accordance with MIL-STD-129, Marking for Shipment and Storage.

(e) The contracting officer shall insert the clause at 252.217-7313, Responsibility for Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to provide reusable containers and equipment.

(f) The contracting officer shall insert the clause at 252.217-7314, Containers and Equipment, in solicitations and indefinite delivery contracts for perishable bakery and dairy products when the contractor is to furnish cabinets for dispensing milk from bulk containers (see 217.7301-4).

Subpart 217.74—Contracts With Requirements For Provisioned Items

217.7400 Scope of subpart.

This subpart sets forth contract requirements and procedures to be followed with respect to the provisioning process.

217.7401 Definitions.

Provisioned Item means any support-type item selected through provisioning procedures to support an end item of equipment. Support-type items include (but are not limited to) spares, repair parts and special support equipment.

Provisioned Items Order means an unpriced order issued under a contract which sets forth the Government's requirements for provisioned items. (Provisioned items for which firm prices have been established are acquired by supplemental agreement or by separate contract.)

Provisioning Activity means that organization of a using Military Service, or that organization delegated by a using Service, which is responsible for the selection of, and the determination of requirements for, provisioned items.

Provisioning Procedure means the contract specification which sets forth the general requirements governing the acquisition of provisioned items and related documentation. It includes various optional provisioning techniques and formats for provisioning lists and data which the Government may elect to use on a particular contract. It also prescribes the sequence and timing of events to be followed and the responsibilities of the Government and the contractor in the provisioning process.

Provisioning Requirements Statement means the contractual document by which the Government notifies the contractor of the specific provisioning requirements selected from available options, as applicable to a particular contract. It normally includes instructions such as the provisioning method to be used; the range of provisioning technical documentation and data including the form and schedule of submission, number of copies and distribution instructions; the type and location of provisioning conferences; sample article requirements; the delivery schedule and packaging and marking requirements for provisioned items, and contractor requirements for provisioning screening.

Provisioning Technical Documentation means the documentation furnished by contractors to a provisioning activity for use in the identification, determination of initial requirements and cataloging of items to be acquired. It generally includes provisioning lists, priced spare parts lists, and EDP cards and tapes. Engineering drawings or sketches supported by item descriptions (which include technical characteristics) are referred to as supplementary provisioning technical documentation.

217.7402 Acquisition requirements.

(a) *Contract requirements.* Contracts which contain Provisioning Procedures shall specify the functions of the provisioning process to be performed under the contract and the activities responsible for performing these functions. Further, such contracts shall:

(1) Include a Provisioning Requirements Statement or specify a time (e.g., days after award) for its incorporation in the contract by contract modification; revisions to the Provisioning Requirements Statement shall also be incorporated by contract modification;

(2) Provide on the DD Form 1423 a time schedule or milestones for the delivery of provisioning technical documentation or for the subsequent incorporation thereof in the contract by contract modification;

(3) Require a flow-down of the appropriate provisioning technical documentation requirement in subcontracts and purchase orders where the documentation is to be prepared by subcontractors;

(4) Specify, if applicable, procedures for contractor interim release of long lead time items and include ordering and funding instructions for such items. (Such instructions shall require the contractor to advise the PCO or Provisioning Activity within 30 days as to the items released, their estimated cost and the effective date of release.);

(5) Provide a time-frame for contractors to furnish price quotations for Provisioned Items Orders, which normally shall not exceed 60 days from receipt of the order;

(6) Specify exhibit identifiers applicable to the contract line/subline items (see 204.7105).

(7) Specify the activity designated to issue Provisioned Items Orders, i.e., Contracting Officer, Provisioning Activity or ACO. (When it is anticipated that more than one department will place Provisioned Items Orders against the contract, the requirements for provisioned items of each department shall be stated as separate contract line items.);

(8) Include procedures for processing changes in quantities of items ordered, including cancellations.

(b) *Issuance of provisioned items orders.* Provisioned Items Orders shall be issued on Standard Form 30, Amendment of Solicitation/Modification of Contract, and numbered in accordance with 204.7004-3.

(1) The Term Provisioned Items Order, in capital letters and underscored, shall be entered in Block 14.

(2) The appropriate exhibit identifier(s) for all attached exhibits shall be entered in Block 14.

(3) The order shall obligate funds to cover the estimated price of the items being ordered. Individual estimated prices will be shown for each exhibit line item on the copy(ies) of the Provisioned Items Order to be provided to the accounting and payment office(s).

(4) The Provisioned Items Order, or other form of contract modification, shall be used to effect decreases in quantities of items ordered, including cancellation.

(5) Upon receipt of advice from the contractor, as provided in (a)(4) above, the contracting officer will normally within 30 days issue an order covering the interim released items or notify the contractor to cancel the items.

(6) Orders shall be given the same distribution as the basic contract (see FAR 4.2) except that the distribution of voluminous spares/repair parts exhibits may be curtailed to the extent determined by the Contracting Officer and provided that the required copies, complete with exhibits, are forwarded to the Contract Administration Office and the payment office.

(c) Additional limitations on the use of undefinitized contract actions can be found in Subpart 217.75.

[51 FR 46173, Dec. 23, 1986, as amended at 52 FR 12388, Apr. 16, 1987, 53 FR 38200, Sept. 29, 1988]

217.7403 Contract administration requirements.

(a) *Provisioning conferences.* The Contracting Officer or Provisioning Activity shall give the Contract Administration Office (CAO) timely notice of conferences on provisioning matters. The CAO shall: (1) Insure that the contractor understands the basic provisioning requirements of the contract and that all applicable publications are available to the contractor; (2) coordinate, as necessary, with the contractor and the Contracting Officer or Provisioning Activity to determine the types of and schedules for provisioning conferences required, e.g., guidance meetings, long lead time items conferences, source coding meetings, etc.; and (3) assist, if required, in the development of conference agenda. When requested by the Contracting Officer or Provisioning Activity or when otherwise considered necessary for effective contract administration, the CAO shall be represented at provisioning conferences.

(b) *Monitoring by the contract administration office.* The CAO shall monitor each contract which contains requirements for provisioning technical documentation and provisioned items, as follows:

(1) Prepare and maintain a check list of events in the provisioning process, including schedules for use in monitoring such events;

(2) Review contractor progress in the preparation of provisioning technical documentation and, on request of the Contracting Officer or Provisioning Activity, inspect such documentation for format and content;

(3) Insure that the contractor invokes the prime contract provisioning technical documentation requirements in subcontracts and purchase orders when the subcontractor is charged with preparation of any documentation;

(4) Advise the Contracting Officer or Provisioning Activity, in accordance with FAR 42.11 of provisioning technical documentation delivery delays or other related problems.

(5) Ensure contractor compliance with contract requirements relative to the assignment of National Stock Numbers.

(6) Ensure that the contractor adheres to the criteria established by the contract for the release of long lead time items.

(c) *Negotiating and executing supplemental agreements.* The ACO shall accomplish negotiation of prices and execution of supplemental agreements within 180 days after receipt of the Provisioned Items Order *provided* that, when time in excess of 60 days is allowed for submission of price quotations (see 217.7402(a)(5)), the 180 day period shall be adjusted accordingly. The ACO also shall maintain records to reflect the status of Provisioned Items Orders as to adequacy of obligated funds, due dates for price quotations, and actions taken to obtain additional funds or deobligate excess funds.

(1) In the process of negotiating prices, the ACO shall:

(i) Determine the acceptability of pricing methods proposed by the contractor;

(ii) Verify that items and quantities contained in proposals are identical to those ordered, clarifying, as appropriate, any variances with the Contracting Officer or Provisioning Activity; and

(iii) Avail himself of data from similar contracts with the contractor, making use of audit records and information available from the Contracting Officer or Provisioning Activity. Price negotiation policies and techniques set forth in FAR 15.8 shall be followed, including the record of price negotiations required by FAR 15.808.

(2) When delivery dates are not proposed by the Contracting Officer or Provisioning Activity or, when proposed delivery dates cannot be met by the contractor, the ACO shall coordinate the negotiated schedule with the Contracting Officer or Provisioning Activity prior to the execution of the supplemental agreement.

(3) Supplemental Agreements shall be used to increase quantities of priced items and to definitize Provisioned Items Orders. Supplemental Agreements which definitize Provisioned

Items Orders may incorporate multiple orders, or portions of orders when such action is not inconsistent with the provisions of the applicable contract.

Subpart 217.75—Undefinitized Contract Actions

SOURCE: 52 FR 12388, Apr. 16, 1987 and 53 FR 38200, Sept. 29, 1988, unless otherwise noted.

217.7500 Scope.

This subpart prescribes policies and procedures implementing 10 U.S.C. 2326, Undefinitized Contractual Actions Restrictions.

217.7501 Definitions.

Contract action, as used in this subpart, means an action resulting in a contract, as defined in FAR subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

Definitization, as used in this subpart, means an agreement on or determination of contract terms, specifications, and price, thus converting the undefinitized contract action to a definitive contract.

Qualifying proposal, as used in this subpart, means a proposal that contains sufficient information to enable the Department of Defense to conduct complete and meaningful audits of the information contained in the proposal and of any other information that the Department is entitled to review in connection with the contract, as determined by the contracting officer.

Undefinitized contract action, as used in this subpart, means any contract action for which the contract terms, specifications, or price are not agreed upon before performance is begun under the action.

217.7502 Applicability.

This subpart applies to all undefinitized contract actions (UCAs) (e.g., letter contracts, unpriced orders under basic ordering agreements or provisioned items) with the exception of UCAs for Foreign Military Sales; purchases of less than $25,000; special access programs; and congressionally-mandated long-lead procurement contracts. In the case of UCAs included in the foregoing exceptions, as well as changes under the Changes clause, the policy set forth in this subpart shall be followed to the maximum extent practical.

217.7503 Policy.

(a) *General.* It is the policy of the Department of Defense that the use undefinitized contract instruments should be limited to the maximum extent practicable. UCAs may only be used when:

(1) The negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and

(2) The Government's interests demand that the contractor be given a binding commitment so that contract performance can begin immediately. UCAs shall be as complete and definite as feasible under the particular circumstances.

(b) *Limitations*—(1) *Authorization.* The contracting officer shall not enter into a UCA without prior authorization from the head of the agency or a designee. The request for authorization shall contain a statement of the impact on the requirements of the agency that would result if a delay is incurred for purposes of determining contract terms, specifications, and price before performance is begun under the contract action.

(2) *Price ceiling.* UCAs shall include a maximum not-to-exceed price that the Government can be charged under the contract action and in excess of which the Government will not negotiate in definitizing the action.

(3) *Definitization schedule.* UCAs shall contain definitization schedules which provide for definitization of the contract action by the earlier of—

(i) The end of the 180-day period beginning on the date of issuance of the action (this period may be extended, as required, but may not exceed the 180-day period beginning on the date the contractor submits a qualifying proposal); or

(ii) The date on which the amount of funds expended under the contract action is equal to more than 50 percent of the maximum not-to-exceed price.

(4) *Limitation on obligations and expenditures.* No more than 50 percent of the maximum not-to-exceed price for the UCA shall be expended by the Government until the contract terms, specifications, and price are definitized. However, if a contractor submits a qualifying proposal to definitize the UCA before 50 percent of the maximum not-to-exceed price is expended by the Government, no more than 75 percent of the maximum, not-to-exceed price may be expended by the Government until the contract terms, specifications, and price are definitized.

(5) *Exception for initial spares.* The limitations set forth in subparagraphs (b)(2), (b)(3) and (b)(4) above do not apply to UCAs for the purchase of initial spares.

(6) *Inclusion of non-urgent requirements.* Requirements for spare parts and support equipment that are not needed on an urgent basis shall not be included in a UCA for spare parts and support equipment that are needed on an urgent basis unless the head of the agency or designee approves such inclusion as being consistent with good business practices and in the best interests of the United States.

(7) *Modification of undefinitized contract actions.* The scope of work specified under a UCA under which performance has begun may not be modified unless the head of the agency or designee approves such modification as being consistent with good business practices and in the best interests of the United States.

(8) *Allowable profit.* The head of an agency or a designee shall ensure that the profit allowed on a UCA, for which the final price is negotiated after a substantial portion of the performance required is completed, reflects:

(i) Any reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

(ii) The reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

[52 FR 12388, Apr. 16, 1987; 52 FR 23835, June 25, 1987; 52 FR 33415, Sept. 3, 1987, as amended at 53 FR 38200, 38243, Sept. 29, 1988]

217.7504 Contract clauses.

(a) The clause at FAR 52.216-24, Limitation of Government Liability, shall be included in all undefinitized contract actions, solicitations associated therewith, and basic ordering agreements contemplating the use of undefinitized orders.

(b) A clause substantially the same as the clause at FAR 52.216-25, Contract Definitization, shall be included in all solicitations and contracts when a UCA is contemplated. The term "letter contract" shall be replaced, as necessary, with the term that describes the particular undefinitized action (e.g., "order"). Alternate I to FAR 52.216-25 may only be used for letter contracts.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

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Sec.

Subpart 219.70—Evaluation preference for Small Disadvantaged Business (SDB) Concerns

219.7000 Policy.
219.7001 Procedures.
219.7002 Contract clause.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

SOURCE: 53 FR 5116, Feb. 19, 1988, and 53 FR 20628, June 6, 1988, unless otherwise noted.

219.000 Scope of part.

(a) (S-70) This part also implements certain provisions of Section 1207, Pub. L. 99-661, and section 806 of Pub. L. 100-180 which establish for DoD an objective of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987-89 to Small Disadvantaged Business (SDB) Concerns, Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs). Sections 1207 and 806 also provide certain discretionary authority to the Secretary of Defense to achieve that objective. Section 831 of Pub. L. 101-189 extended the objective through Fiscal Year 1993.

[53 FR 5116, Feb. 19, 1988, and 53 FR 20628, June 6, 1988, as amended at 53 FR 51560, Dec. 22, 1988; 55 FR 19077, May 8, 1990]

219.001 Definitions.

Small disadvantaged business (SDB) concern, as used in this part, means a small business concern, including mass media, owned and controlled by individuals who are both socially and economically disadvantaged, as defined in regulations prescribed by the Small Business Administration (SBA) at 13 CFR part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern that is owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian Organization as defined in regulations prescribed by the SBA at 13 CFR part 124, the majority of earnings of which directly accrue to the individual or entity upon which disadvantaged status is based.

[53 FR 5116, Feb. 19, 1988, and 53 FR 20628, June 6, 1988, as amended at 55 FR 19077, May 8, 1990]

Subpart 219.1—Size Standards

219.102-70 Size standards for transportation industries.

No concern offering to provide local and/or long distance trucking, warehousing and/or packing and crating, and/or freight forwarding will be denied small business status for the purpose of Government acquisition solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded the applicable limitation in FAR 19.102 during its most recently completed fiscal year.

[53 FR 5117, Feb. 19, 1988, as amended at 53 FR 20628, June 6, 1988]

Subpart 219.2—Policies

219.201 General policy.

(a) In furtherance of the Government policy of placing a fair proportion of its acquisitions with Small Disadvantaged Business (SDB) Concerns and Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs), section 1207 of Pub. L. 99-661, and section 806 of Pub. L. 100-180 and Section 831 of Pub. L. 101-189 established an objective for the Department of Defense of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987-93 to SDBs, HBCUs and MIs (see subpart 226.70), and of maximizing the number of such entities participating in Defense prime contracts and subcontracts. It is the policy of the Department of Defense to strive to meet these objectives through the enhanced use of outreach efforts, technical assistance programs, the section 8(a) Program, and the special authorities conveyed by section 1207 and section 806 (e.g., through the creation of an SDB set-aside, the use of evaluation preferences, and the use of advance payments, when appropriate under FAR Subpart 32.4). With regard to technical assistance programs, it is the Department's policy to provide SDB concerns technical assistance, to include information about the Department's SDB Program, advice about acquisition procedures, instructions on preparation of proposals, and such other assistance as is consistent with the Department's mission.

(b)(1) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(2) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(3) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(4) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such report shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

(5) Departmental Directors of Small and Disadvantaged Business Utilization shall establish a program to conduct reviews at a minimum of six subordinate activities per year and forward the results of such reviews to the activity for development of a plan to overcome noted deficiencies.

(c)(3) The Department of Defense Director of Small and Disadvantaged Business Utilization is responsible only to and reports directly to the Secretary or the Secretary's designee.

(c)(9) The responsibility of the agency Director of Small and Disadvantaged Business Utilization for making recommendations as to whether a particular acquisition should be awarded under FAR subparts 19.5, 19.8, or under one of the procedures authorized by section 1207 of Pub. L. 99-661 is delegated to small and disadvantaged business utilization specialists.

(d) (1) Small and disadvantaged business utilization specialists shall be appointed by name, in writing, for contracting activities, contract administration offices, and other such offices, as the Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting, contract administration, or technical personnel. The appointing authority, without power of redelegation, is as follows:

(i) *Army*—Commanders of major commands, Commanders of major subordinate commands, and installation, post, camp, station or activity commanders. For each major command, one specialist will be appointed as the Associate Director for Small and Disadvantaged Business Utilization, reporting directly to the Commander or the second-in-command. The Associate Director will have primary responsibility for the effective implementation of the Army's small business, disadvantaged business utilization, labor surplus area and other socio-economic business programs within the Command. The Associate Director for Small and Disadvantaged Business Utilization Policy at Major Command Headquarters other than at the Army Materiel Command (AMC), Office, Chief of Engineers (OCE), Forces Command (FORSCOM), and Training and Doctrine Command (TRADOC), may be assigned on a part-time basis.

(ii) *Navy*—Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;

(iii) *Air Force*—Commander of each central contracting activity; the Wing/Base Commander of each local contracting office and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor surplus area program(s) within the Command;

(iv) *Defense Logistics Agency*—Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and Commanders of other DLA contracting activities;

(v) *National Security Agency*—the Director;

(vi) *Defense Communications Agency*—the Director;

(vii) *Defense Nuclear Agency*—the Director;

(viii) *Defense Mapping Agency*—Director; directors of subordinate components;

(ix) *Strategic Defense Initiative Organization*—the Director.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (219.201(S-71)). In addition to performing that portion of the specific program outlined in paragraph (d)(2) below that is normally performed in the activity to which the specialist is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for the specialist in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full-time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

(2) A small and disadvantaged business utilization specialist (SADBUS), appointed pursuant to the above, shall perform the following duties, as determined to be appropriate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADBUS shall:

(i) Maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;

(ii) Coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;

(iii) Review acquisitions to insure maximum opportunity for participation by small, small disadvantaged business, women-owned, and LSA concerns, and to make recommendations for set-aside and 8(a) awards (see 219.501(c));

(iv) When small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings of the current or future acquisitions, as appropriate, are available;

(v) Review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;

(vi) Ensure that financial assistance available under existing regulations is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts;

(vii) Participate in determinations concerning responsibility of a prospective contractor whenever small business concerns are involved;

(viii) Participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) Review and make appropriate recommendations to the contracting officer on any proposal to furnish Government-owned facilities to a contractor if such action may hurt the small business program;

(x) Assure that participation of small business concerns is accurately reported;

(xi) Bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus areas;

(xii) Make available to SBA copies of solicitations when so requested;

(xiii) When a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) Participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) Advise potential suppliers how they may obtain information about sealed bidding and negotiated acquisitions and that they may subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) Brief the specialist's Commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) Participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to FAR 19.202-4(c), FAR 19.501(c), and FAR 19.502;

(xviii) Assist program managers as early as possible in the development cycle of major system acquisitions and system programs as pertains to the small business programs;

(xix) Assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) Assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropriate media;

(xxi) Assure that the organization maintains a list of products and services which have been placed on repetitive small business set-aside;

(xxii) Provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade, and other associations;

(xxiii) Be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) Recommend to the specialist's Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices;

(xxv) Participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU; and

(xxvi) Advise and assist contracting officers in discharging their responsibilities by:

(A) Monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;

(B) Developing and maintaining records and reports that reflect such compliance or noncompliance.

(xxvii) Assist contracting officers to seek and develop information on the technical competence of Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs), as defined at subpart 226.70.

(xxviii) make recommendations to contracting officers as to whether a particular acquisition should be awarded under FAR Subpart 19.5 as a set-aside (including those involving Labor Surplus Areas), under FAR subpart 19.8 as a Section 8(a) award, or under a procedure authorized by Section 1207 of Pub. L. 99-661; and

(xxix) assist small business concerns in obtaining payments under their contracts, late payment interest penalties, or information on contractual payments provisions.

(S-70) *Office of the Secretary of Defense Directors*— (1) *Director of Small and Disadvantaged Business Utilization.* The Director of Small and Disadvantaged Business Utilization is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense or designee in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(2) *Director of Small Business and Economic Utilization Policy.* The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(3) *Director of Disadvantaged Business Utilization Policy.* The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business utilization policy, programs, and DoD goals shall be conducted by the Director for Disadvantaged Business Utilization Policy or, with authorization, by representatives of the Departments. The Director of Disadvantaged Business Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding disadvantaged business utilization matters.

(S-71) *Departmental Directors of Small and Disadvantaged Business Utilization.* (1) Each department or agency shall maintain an Office of Small and Disadvantaged Business Utilization as follows:

(i) *Army*—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, DC 20310;

(ii) *Navy*—Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, DC 20360;

(iii) *Air Force*—Director, Office of Small and Disadvantaged Business

Utilization, SAF/SB, Pentagon, Washington, DC 20330;

(iv) *Defense Logistics Agency*—Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA-U, Cameron Station, Alexandria, VA 22314;

(v) *National Security Agency*—Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

(vi) *Defense Communications Agency*—Director, Office of Small and Disadvantaged Business Utilization, Code 260, Washington, DC 20035;

(vii) *Defense Nuclear Agency*—Director, Office of Small and Disadvantaged Business Utilization, (Code OAFR), Washington DC 20305;

(viii) *Defense Mapping Agency*—Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, DC 20305.

(ix) *Strategic Defense Initiative Organization*—Director of Small and Disadvantaged Business Utilization, Headquarters, Washington, DC 20301-7100.

(2) Each Departmental Office of Small and Disadvantaged Business Utilization shall be managed by a Director who shall be appointed by the Secretary of the Department and shall be responsible to and report directly to the Secretary or Under Secretary of the Department. Directors of Defense agencies shall appoint a Staff Director for Small and Disadvantaged Business Utilization who shall be responsible to and report directly to the Director or the Deputy Director.

(3) The primary responsibility of the Director or Staff Director of each Office of Small and Disadvantaged Business Utilization shall be in matters concerning small business, small disadvantaged business utilization, and labor surplus areas. The Director or Staff Director advises the Secretary on small business, small disadvantaged business utilization and labor surplus area matters, implements such DoD programs within the Department or Agency and represents the Department or Agency in negotiations with other Departments or Governmental agencies on small business, small disadvantaged business utilization and labor surplus area matters. The Director or Staff Director will exercise supervisory authority over Department or Agency Small and Disadvantaged Business Utilization Specialists regarding small business, disadvantaged business utilization and labor surplus area matters. Appointment of Small and Disadvantaged Business Utilization Specialists shall be made after consultation with the Director or Staff Director of the Office of Small and Disadvantaged Business Utilization of the Department or Agency involved. In addition, such Director shall be afforded an opportunity to comment upon, and contribute to the performance evaluations of the Specialists for the contracting activities and contract administration offices or major organizational elements of the Department involved, including pay pursuant to the Civil Service Reform Act of 1978.

(S-72) *Small Business Technical Advisor.* (1) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of the duties of the representative.

(2) A Small Business Technical Advisor (SBTA) shall be a full-time employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(3) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in that person's duties and functions relating to sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

[53 FR 5116, Feb. 19, 1989, amd 53 FR 20628, June 6, 1988, as amended at 54 FR 26207, June 22, 1989; 54 FR 20592, May 12, 1989; 54 FR 30741, July 24, 1989; 55 FR 19077, May 8, 1990]

219.202 Special policies.

219.202-1 Encouraging small business participation in acquisitions.

(S-70) *Encouraging Small and Small Disadvantaged Business Participation in Acquisitions.* The Departments to the extent consistent with the best interests of the Government and in order to broaden the industrial base shall:

(1) Attempt to locate additional qualified small business suppliers by all appropriate methods including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(2) Give wide publicity to contracting methods and practices;

(3) Publicize proposed acquisitions by use of advance notices or other apporpriate methods (see FAR 5.2);

(4) Include all established and qualified potential small business suppliers on mailing lists;

(5) Send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to FAR 14.205-4, at least a *pro rata* number of small business concerns shall be solicited;

(6) Divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(7) Examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(8) Use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program;

(9) Maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns; and

(10) Require that contracting officers emphasize the award of contracts to SDBs in all industry categories in which SDBs have not traditionally dominated.

(11) Where appropriate, hold quarterly briefings for SDBs and/or HBCUs/MIs on planned acquisitions and engage in other outreach activity such as providing information about specific programs, services and supply class items and minimizing use of sources sought synopsis to locate SDBs and HBCUs/MIs.

[53 FR 5116, Feb. 19, 1989, amd 53 FR 20628, June 6, 1988, as amended at 54 FR 26207, June 22, 1989]

219.202-5 Data collection and reporting requirements.

(a) Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office), Standard Form 294 (Subcontracting report for Individual Contracts), and Standard Form 295 (Summary Subcontract Report), as appropriate.

(b) The contracting officer shall insert the following format in the contract file for each award of a letter contract, a definitive contract superseding a letter contract, an initial definitive contract, orders under a BOA, and additional work under a new agreement (including options exercised at time of award). When awarded based upon SDB set-aside under 219.502-72 or an HBCU/MI set-aside under (226.7004), the amount entered in item 5 will be the fair market price determined in accordance with FAR 19.806-2. When awarded based upon preferential consideration under 219.502-3(S-70), the amount entered in item 5 will be the highest unit price for each item awarded on the non-set-aside portion, multiplied by the applicable set-aside quantity. When awarded based upon an evaluation preference under subpart 219.70, the amount entered in item 5 will be the value of the otherwise responsive offer prior to application of the evaluation percentage.

PERCENTAGE PAID ON SMALL DISADVANTAGED BUSINESS (SDB) AND HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND MINORITY INSTITUTIONS (HBCUs/MIs) AWARDS $25,000, AND OVER

1. Contract number ____________________
2. Modification number (if appropriate) ___

3. Award date: ______

(whole dollars)

4. Award price (including options exercised): ______
5. Total value of fair market price: ______
6. Difference ((4) minus (5)): ______
7. Premium percent ((6) divided by (5)): ______

[53 FR 5120, Feb. 19, 1988, as amended at 53 FR 20628, June 6, 1988; 53 FR 50415, Dec. 15, 1988]

Subpart 219.3—Determination of Status as a Small Business Concern

219.301 Representation by the offeror.

219.301-70 Eligibility for award.

(a) To be eligible for award under 219.502-72; for a partial set-aside with preferential consideration under 219.502-3(S-70); or, for an evaluation preference under Subpart 219.70, a concern must qualify as an SDB (see 219.001) upon the date of (1) submission of its offer and (2) contract award.

(b)(1) Except as provided in paragraph (b)(3) below, the contracting officer shall accept an offeror's representation and certification under the provision at 252.219-7005 that it is an SDB unless another offeror or the SBA challenges the concern's SDB status, or the contracting officer has reason to question that status.

(2) The contracting officer may presume that socially and economically disadvantaged individuals include Black Americans (U.S. Citizens), Hispanic Americans (U.S. Citizens whose ancestry and culture are rooted in South America, Central America, Mexico, Cuba, the Dominican Republic, Puerto Rico, Spain or Portugal), Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans (U.S. Citizens whose ancestry and culture are rooted in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia), Subcontinent Asian Americans (U.S. Citizens with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal) and any other individual/concern currently certified for participation in the section 8(a) program. In addition, the contracting officer may presume that concerns owned by Indian tribes and Native Hawaiian Organizations qualify as small disadvantaged business concerns.

(3) The contracting officer may not presume and shall question the SDB status of any apparent successful offeror whose ownership is based on any category other than those in paragraph (b)(2) above, unless the offeror has represented and certified under the provision at 252.219-7005 that, within the six months preceding submission of its offer, it has been determined by the Small Business Administration to be socially and economically disadvantaged and that no circumstances have changed to vary that determination. The contracting officer shall protest the disadvantaged status of any apparent successful offeror which has certified that it previously was determined to be non-disadvantaged by the SBA.

(4) Challenges of and questions concerning the social or economic status of an offeror shall be processed in accordance with 219.302(S-70). Challenges of and questions concerning the size of an SDB shall be processed in accordance with FAR 19.302.

[53 FR 5120, Feb. 19, 1988, as amended at 53 FR 20628, June 6, 1988; 55 FR 19077, May 8, 1990; 55 FR 30157, July 24, 1990]

219.302 Protesting a small business representation.

(S-70) *Protesting the Disadvantaged Status of an Offeror.* (1) Any offeror or the SBA may, in connection with a contract involving an award to an SDB pursuant to 219.502-3(S-70), 219.502-72, or Subpart 219.70, challenge the social or economic disadvantaged status of a concern representing that it is an SDB. An offeror may protest an SDB representation by sending or delivering a protest to the contracting officer responsible for the particular acquisition. The protest shall contain the basis for the challenge together with specific detailed evidence supporting the protestor's claim. The SBA may protest an SDB representation by filing a protest with its Director of the Office of Program Eligibility and notifying the contracting officer of the filing.

(2) In order to apply to the acquisition in question, an offeror's protest must be filed with and received by the contracting officer prior to the close of business on the fifth business day after the bid opening date for sealed bids, or after the receipt from the contracting officer of notification of the identity of the apparently successful SDB offeror in negotiated acquisitions. In negotiated acquisitions, the contracting officer shall notify the apparently unsuccessful offerors of the apparently successful SDB offeror(s) in accordance with FAR 15.1001. An SBA protest is always considered timely.

(3) To be considered timely, a protest must be delivered to the contracting officer by hand or telegram within the period allotted or by letter postmarked within the period. A protest shall also be considered timely if made orally to the contracting officer within the period allotted, and if the contracting officer thereafter receives a confirming letter postmarked not later than one day after the date of such oral protest. Protests which are filed before the bid opening or notification of apparent successful offeror, in the case of a negotiated acquisition, are premature and shall be returned to the protestor by the contracting officer.

(4) Upon receipt of a protest concerning social or economic disadvantaged status of an SDB, the contracting officer shall withhold award and forward the protest to the Small Business Administration (SBA) Office of Program Eligibility, Office of Minority Small Business and Capital Ownership Development, 1441 L Street, NW., Washington, DC 20416. The referral shall include: (i) The protest; (ii) The date on which the protest was received and a determination as to timeliness; (iii) A copy of the protested concern's self-certification as to disadvantaged status; and (iv) The date of bid opening or date on which notification of apparent sucessful offeror was sent to all unsuccessful offerors. Award shall not be withheld (i) when the contracting officer determines in writing that an award must be made to protect the public interest, or (ii) if the offeror certifies in accordance with 252.219-7005 that within the six months preceding submission of its offer it has been determined by SBA to be socially and economically disadvantaged and no circumstances have changed to vary that determination. In the event of a protest which is not timely, the contracting officer shall notify the protestor that its protest cannot be considered. However, the contracting officer or the SBA may question the SDB status of an apparently successful offeror at any time either before or after award. When the contracting officer protests the SDB status of an apparently successful offeror, it may be the result of information brought to the contracting officer's attention by a third party, either ineligible to protest directly or ineligible to protest under the timeliness standard. In such instances, the contracting officer must be persuaded by the evidence presented before adopting such grounds for protest as his or her own.

(5) The SBA Director, Office of Program Eligibilty will determine the social and economic disadvantaged status of the challenged offeror and notify the contracting officer, the challenged offeror, and the protestor of its determination. Award may be made on the basis of the determination. This determination is final for purposes of the instant acquisition unless it is appealed in accordance with paragraph (S-70)(7) below and a decision on the appeal is received by the contracting officer before award.

(6) If the SBA determination is not received by the contracting officer within 15 business days after the SBA's receipt of the protest, it shall be presumed that the challenged offeror is socially and economically disadvantaged. This presumption will not be used as a basis for award without first ascertaining when a determination can be expected from SBA, and where practicable, waiting for such determination, unless further delay in award

would be disadvantageous to the Government.

(7) An appeal from the SBA determination may be filed by (i) any concern or other interested party whose protest of the disadvantaged business status of a concern has been denied, (ii) the concern whose disadvantaged status was protested, or (iii) the contracting officer. The appeal must be filed with the Associate Administrator for Minority Small Business and Capital Ownership Development, Small Business Administration, Washington, DC 20416, within five business days after receipt of the determination by the Director of the Office of Program Eligibilty. The SBA will inform the contracting officer of its decision on the appeal. The SBA decision, if received before award, will apply to the instant acquisition. SBA decisions received after award will apply to future acquisitions.

[53 FR 5121, Feb. 19, 1988, as amended at 53 FR 20628, June 6, 1988; 53 FR 38243, Sept. 29, 1988; 55 FR 19077, May 8, 1990]

219.304 Solicitation provisions.

(b) Department of Defense activities shall use the provision at 252.219-7005, Small Disadvantaged Business Concern Representation (DoD FAR Supplement Deviation), in lieu of the provision at FAR 52.219-2, Small Disadvantaged Business Concern Representation.

Subpart 219.4—Cooperation with the Small Business Administration

219.401 General.

(b) The contracting activity Small and Disadvantaged Business Utilization Specialist shall be the activity focal point for interface with the SBA.

219.402 Small Business Administration procurement center representatives.

(b) The SBA procurement center representative's request for access to contract information will be processed through the activity's Small and Disadvantaged Business Utilization Office.

Subpart 219.5—Set-Asides for Small Business

219.501 General.

(b) The determination to make an SDB set-aside is a unilateral determination by the contracting officer.

(c) The Small and Disadvantaged Business Utilization Specialist (SADBUS) is responsible for reviewing those acquisitions not set-aside for small or small disadvantaged business, or not acquired through small business-small purchase set-aside. Prior to the issuance of solicitations or contract modifications (except those that exercise an option), the SADBUS shall review any determination by a contracting officer not to set aside for SDBs acquisitions in excess of $5,000 for additional supplies and services which meet the criteria of 219.502-72(c). In addition, the SADBUS shall review acquisitions in excess of $5,000 for additional supplies and services—(1) Which have not been set aside under FAR 19.502, or (2) For which a small business-small purchase set-aside has been dissolved. The SADBUS shall make a recommendation to the contracting officer for set-aside, as appropriate, on an individual acquisition, or class of acquisition, or portion thereof. In automated contracting systems, such reviews will be accomplished prior to entering the item into the automated system after which no further review of the individual acquisition will be necessary if the automated system is so programmed that any changes in the acquisition of the item satisfy the provisions of FAR 19.502-2. Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business shall be resolved under FAR 19.505. Disagreements on a small disadvantaged business set-aside shall be resolved under 219.502-72(d). Disagreements on small business-small purchase set-asides shall be resolved under FAR 13.105 by the contracting officer.

(d) All cases involving a decision not to set-aside for small business, whether resulting from a joint decision of the SADBUS and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for that person's review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of FAR 19.505. Actions that have been unilaterally set-aside for SDBs are not referred to the SBA representative for review.

(g) This procedure is applicable to DoD.

In addition, once a product or service has been acquired successfully by a contracting office on the basis of an SDB set-aside, all future requirements of that office for that particular product or service, not subject to simplified small purchase procedures, shall be acquired on the basis of a repetitive SDB set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that the requirements of 219.502-72(a) can be met. Withdrawal of a repetitive SDB set-aside shall be in accordance with 219.502-72(d).

(S-70) As provided by 10 U.S.C. 2855, architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Indefinite delivery and indefinite quantity contracts for architectural and engineering services that are set-aside for small business shall not exceed, for the total of orders placed under the contract, $85,000.

(S-71) Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 219.505 shall apply. (But see 219.502-72(b)(2).)

(S-72) Every proposed acquisition of $2 million or more for construction or $1 million or more for dredging, shall be considered on an individual acquisition basis under FAR 19.502-2.

(S-73) Every proposed acquisition for A-E services and construction design under $85,000 for military construction projects shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 219.505 shall apply. (But see 219.502-72(b)(3).) (See 10 U.S.C. 2855.)

[53 FR 5121, Feb. 19, 1988, as amended at 53 FR 20629, June 6, 1988; 53 FR 38175, Sept. 29, 1988; 55 FR 19077, May 8, 1990]

219.501-70 Small disadvantaged business set-asides.

As authorized by the provisions of section 1207 of Pub. L. 99-661, section 806 of Pub. L. 100-180, and Section 831 of Pub. L. 101-189, special categories of set-asides have been established for the Department of Defense for acquisitions conducted during fiscal years 1987-93. See 219.502-72 and 219.502-3.

[53 FR 5116, Feb. 19, 1988, as amended at 54 FR 53616, Dec. 29, 1989; 55 FR 19078, May 8, 1990]

219.502 Setting aside acquisitions.

219.502-1 Requirements for setting aside acquisitions.

Department of Defense activities follow the order of precedence in 219.504. Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set-aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

219.502-2 Total set-asides.

Where multiyear contracting procedures are appropriate, total set-asides may be made in connection therewith.

219.502-3 Partial set-asides.

(S-70) *Partial Set-Aside With Preferential Consideration for Small Disadvantaged Business Concerns.* (1) The contracting officer shall set aside a portion of an acquisition, except for construction and purchases for commissary or exchange resale, for exclusive small business participation and afford preferential consideration (see paragraph (S-70) (2) below) to SDB concerns when—

(i) The circumstances described in FAR 19.502-3(a) (2), (4) and (5) are present; and

(ii) One or more responsible small disadvantaged business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a price not exceeding fair market price (determined in accordance with FAR 19.806-2) by more than 10 percent.

(2) Under this procedure, SDB concerns are given certain preferential consideration over non-SDB, small buisness and small business-labor surplus area concerns with respect to the set-aside portion of the contract. In addition, through use of the procedure set forth in the clause at 252.219-7010, award of the set-aside portion to an SDB concern may be made at a price exceeding that of the non-set-aside portion (see paragraph (b) of the clause at 252.219-7010). See FAR 19.502-3(b), (c)(1) and (c)(2)(i) for additional procedures.

(3) See 219.504 concerning the order of precedence to be accorded this procedure.

[53 FR 5122, Feb. 19, 1988, as amended at 53 FR 20629, June 6, 1988; 54 FR 53616, Dec. 29, 1989]

219.502-4 Methods of conducting set-asides.

(a) SDB set-asides may be conducted by using sealed bids or competitive proposals.

(b) Offers received on an SDB set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

219.502-70 Combined small business-labor surplus area set-asides.

(a) In the acquisition of certain items, the objectives of both the Small Business Act and Defense Manpower Policy (DMP) No. 4 may be attained in a single acquisition. Under this procedure, the total required quantity of an item would be set aside for exclusive participation by small business firms and a portion of that total quantity would be further set-aside for award to small business concerns which are also LSA firms.

(b) For acquisitions exceeding $25,000, the use of this combined small business-LSA set-aside procedure shall be considered. This procedure shall be used in preference to all others, except SDB set-asides, when the proposed acquisition meets the criteria for:

(1) Total small business set-aside (FAR 19.502-2), and

(2) A partial LSA set-aside (220.7003).

(c) Contracts utilizing this procedure may be entered into by sealed bidding or negotiation. (See FAR 6.102, FAR parts 14 and 15.) This set-aside procedure may be used in multi-year contracting (FAR subpart 17.1). Solicitations shall provide that offers may be submitted by small business firms only and that a part of the total requirement is further set-aside for LSA firms which are also small business concerns. Offers received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(d)(1) In combined small business-LSA set-asides each solicitation shall contain the clause at 252.219-7001, Notice of Combined Small Business-Labor Surplus Area Set-Aside (except see (d)(2) below).

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause at 252.219-7002, Notice of Combined Small Business-Labor Surplus Area Set-Aside, Alternate, may be used.

(e)(1) After the award price for the non LSA set-aside portion has been determined, negotiations may be conducted for the LSA set-aside portion. Acquisition of the LSA set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non LSA set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the foregoing clause; *provided* that, when equal low offers are received on the non LSA set-aside portion from concerns which are equally eligible for the LSA set-aside portion, the concern which is awarded the non LSA set-aside portion (under the equal low bid procedure of 214.407-6) shall have first priority with respect to negotiations for the LSA set-aside portion. The LSA set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds, or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses at FAR 52.215-1, Examination of Records by Comptroller General, and at FAR 52.215-2, Audit—Negotiation.

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses at FAR 52.215-1, Examination of Records by Comptroller General, and at FAR 52.215-2, Audit—Negotiation, applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (e)(2) and (e)(3) above. Also, the award shall reference in Block 18 of the Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient. For purposes of subpart 204.6, the non-LSA set-aside portion shall be reported separately. (See FAR 19.507 for automatic dissolution of set-asides.)

[53 FR 5122, Feb. 19, 1988, as amended at 53 FR 38243, Sept. 29, 1988]

219.502-71 [Reserved]

219.502-72 Total SDB set-asides.

(a) *Policy.* Except as provided in (b) below, the entire amount of an individual acquisition shall be set-aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that:

(1) Offers will be obtained from at least two responsible SDB concerns who—

(i) Can comply with the limitations on subcontracting in the clause at FAR 52.219-14; or

(ii) In the case of regular dealers, will provide the supplies of other SDBs (except as provided in Alternate I of the clause at 252.219-7006);

(2) Award will be made at a price not exceeding the fair market price (see FAR 19.806-2) by more than 10 percent; and

(3) Scientific and/or technological talent consistent with the demands of the acquisition will be obtained

through use of a total SDB set-aside. (For R&D acquisitions, see FAR 19.502-2.)

(b) *Exceptions.* Total SDB set-asides shall not be conducted under the following circumstances:

(1) The product or service has been previously acquired successfully by the contracting office on the basis of a small business set-aside (see FAR 19.501(g));

(2) The acquisition is for construction, including maintenance and repairs and dredging, within the dollar limits in 219.501(g)(S-71);

(3) The acquisition is for A&E services or construction design for military construction projects;

(4) The acquisition has been reserved for the 8(a) program (see FAR 19.803);

(5) The acquisition is conducted using small purchase procedures (see FAR Part 13); or

(6) The acquisition is for purchase of commissary or exchange resale items.

(c) The contracting officer shall presume that there are two responsible SDB concerns meeting the criteria in paragraph (a) above when any of the following circumstances are present:

(1) The acquisition history shows that within the past 12-month period, a responsive offer of at least one responsible SDB concern was within 10 percent of an award price on a previous procurement of similar supplies or services and either—

(i) At least one other responsible SDB source appears on the activity's solicitation mailing list for similar supplies or services; or

(ii) At least one other responsible SDB responds to a presolicitation notice in the Commerce Business Daily; or

(2) The contracting officer has sufficient factual information, such as the results of capability surveys by DoD technical teams, to be able to identify at least two responsible SDB sources.

(d) When either of the circumstances described in paragraph (c)(1) or (2) above are present and the contracting officer has determined not to set-aside the acquisition, the contracting officer will refer the acquisition to the activity's SADBUS for review prior to issuing a solicitation. In the event of a disagreement between the contracting officer and the SADBUS, the case will be promptly referred to the appointing authority (see 219.201(d)(1)) for decision. The decision of the appointing authority is final.

(e) If it is necessary to obtain information in accordance with paragraph (c)(1) above, the contracting officer will include a notice in the synopsis indicating that the acquisition may be totally set aside for exclusive SDB participation if sufficient SDB sources are identified prior to issuance of the solicitation (see 205.207(d) (S-73)). The notice should encourage such firms to make their interest and capabilities known as expeditiously as possible. If prior to synopsis, a decision has been made to set-aside the acquisition totally for SDBs, the synopsis shall so indicate (see 205.207(d) (S-72)). In this regard, section 806 of Pub. L. 100-180 requires that a procurement which is likely to be set-aside for SDBs be designated as such before a solicitation is issued, to the maximum extent practicable.

[53 FR 5123, Feb. 19, 1988, as amended at 53 FR 20629, June 6, 1988; 54 FR 53616, Dec. 29, 1989]

219.503 Setting aside a class of acquisitions.

(d) The contracting officer may initiate withdrawal of an individual acquisition or modification of a class set-aside by giving written notice to the activity's SADBUS and the SBA Procurement Center Representative. In case of disagreement, the matter will be resolved under the procedures in FAR 19.506(b).

219.504 Set-Aside program order of precedence.

(b) The following order of precedence applies to DoD:

(1) Total SDB Set-Aside (219.502-72)

(2) Combined small business/LSA set-aside (219.502-70)

(3) Partial set-aside for LSA firms (220.7003(a))

(4) Total set-aside for small business firms (FAR 19.502-2)

(5) Partial set-aside for small business firms with preferential consideration for SBDs (219.502-3(S-70))

(6) Partial set-aside for small business (FAR 19.502-3)

219.505 Rejecting set-aside recommendations.

(a) Upon a recommendation of the SADBUS that an individual acquisition or class of acquisitions, or portion thereof, be set-aside, the contracting officer shall promptly either:

(1) Concur in the recommendation, or

(2) Disapprove, stating in writing the reasons for disapproval.

If the contracting officer disapproves the recommendation of the SADBUS, the case shall be promptly referred to the SBA representative (if one is assigned and available) for review. No further appeal action will be taken by the small business specialist. In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 219.201(d)(1)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or designee as identified in 219.201(c) (S-71). The specialist's signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

(b) The head of the contracting activity's designee shall be at a level no lower than the chief of the contracting office.

(d) The matter shall be forwarded with full justification of the action taken through normal channels.

(e) Should it be determiend that a decision cannot be made within 30 business days, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(f) The contracting officer must determine that contracting action must proceed without delay in order to protect the public interest. The contracting officer's statement shall be approved at a level above the contracting officer.

219.505-70 Rejecting SDB set-asides.

The procedures in FAR 19.505 and 219.505 do not apply to SDB set-asides (see 219.502-72(d)).

[53 FR 20629, June 6, 1988, as amended at 54 FR 53616, Dec. 29, 1989]

219.506 Withdrawing or modifying set-asides.

(a) Total SDB Set-Aside determinations will not be withdrawn for reasons of price reasonableness unless the low responsive responsible offer exceeds the fair market price by more than 10 percent. In such cases, or as provided at FAR 19.506(a), the contracting officer shall initiate a withdrawal.

(b) Disagreements between the contracting officer and the SADBUS on small business set-asides will be resolved in accordance with the procedures in 219.505. These procedures do not apply to SDB set-asides. Disagreements between the contracting officer and the SADBUS on SDB set-asides will be resolved in accordance with the procedures in 219.502-72(d).

[53 FR 5124, Feb. 19, 1988, as amended at 53 FR 38243, Sept. 29, 1988]

219.507 Automatic dissolution of a set-aside.

(S-70) The dissolution of a Total SDB Set-Aside does not preclude subsequent solicitation as a Small Business Set-Aside.

219.508 Solicitation provisions and contract clauses.

(d) When using the clauses at 252.219-7009 or FAR 52.219-7, the contracting officer shall insert the clause at 252.219-7003, Determining the Set-Aside Award Price. See paragraph (S-72) below regarding use of the clause at FAR 52.219-7.

(S-70) The contracting officer shall insert the clause at 252.219-7004, Eligibility for Preference as a Labor Surplus Concern, in solicitations and contracts for partial small business set-asides under FAR 19.502-3, for Combined Small Business-Labor Surplus Area Set-Asides under 219.502-70, and for partial set-asides for Labor Surplus Area Concerns under 220.7003.

(S-71) (1) The contracting officer shall insert the clause at 252.219-7006, Notice of Total Small Disadvantaged Business Set-Aside, in solicitations and contracts for Total SDB Set-Asides (see 219.502-72).

(2) The contracting officer shall insert the clause with its Alternate I when the contracting officer determines, in coordination with the contracting activity's SADBU, that there are no SDB manufacturers available that can meet the requirements of the solicitation.

(S-72)(1) The contracting officer shall insert the clause at 252.219-7010, Notice of Partial Small Business Set-Aside With Preferential Consideration For Small Disadvantaged Business (SDB) Concerns, in solicitations and contracts when the conditions at 219.502-3(S-70) are present. In such cases the clause at FAR 52.219-7, Notice of Partial Small Business Set-Aside, will not be used.

(2) The contracting officer shall insert the clause with its Alternate I when the contracting officer determines, in coordination with the contracting activity's SADBUS, that there are no SDB manufacturers available that can meet the requirements of the solicitation.

(S-73) The contracting officer shall insert the clause at 252.219-7011, Determining the Set-Aside Award Price (Preferential Small Disadvantaged Business Consideration), in solicitations and contracts when the clause at 252.219-7010 is used.

(e) The contracting officer shall insert the clause at FAR 52.219-14, Limitations on Subcontracting, in solicitations and contracts, except those awarded using small purchase procedures in FAR part 13, for supplies, services, and construction, if any portion of the requirement is to be set aside for small business (including small disadvantaged business), or if the contract is to be awarded under FAR Subpart 19.8.

[53 FR 5124, Feb. 19, 1988, as amended at 53 FR 20629, June 6, 1988; 53 FR 50415, Dec. 15, 1988; 54 FR 31038, July 26, 1989]

Subpart 219.6—Certificates of Competency and Determinations of Eligibility

219.602 Procedures.

219.602-1 Referral.

(a) When the contracting officer makes a determination that a small business concern is not responsible on a proposed award, the contracting officer will refer the matter directly to the SBA. The activity that refers the matter to the SBA shall maintain close liaison. If the activity does not hear from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a Certificate of Competency (CoC) is being processed.

219.602-3 Resolving differences between the agency and the Small Business Administration.

(a) Prior to final SBA action, the contracting officer (or the preaward survey activity when authorized to act as contracting officer's representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the contracting officer or contracting officer's representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or contracting officer's representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(b)(2) If the contracting officer intends to appeal a proposed CoC issuance, upon receipt of initial notification from the SBA Central Office that it concurs with its Regional Office, the contracting officer shall immediately inform the Departmental or Agency Director of Staff Director of Small and Disadvantaged Business Utilization indentified in 219.201(S-71)(1). If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through Departmental channels for approval at the Sercretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a CoC or that a CoC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly.

[53 FR 5125, Feb. 19, 1988, as amended at 53 FR 20629, June 6, 1988]

Subpart 219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

219.702 Statutory requirements.

(a) Contractors who have been selected for participation in the test program authorized by section 834 of Public Law 101-189 and who have approved comprehensive subcontracting plans are not required to negotiate subcontracting plans on an individual contract basis for Department of Defense contracts. Section 834 authorizes the Department of Defense to establish a test program to determine whether comprehensive subcontracting plans on a corporate, division, or plant-wide basis will increase subcontracting opportunities for small business concerns. Under the test program, contractors selected for the test will negotiate comprehensive small business subcontracting plans with a designated DoD contracting activity for use in all DoD contracts that require subcontracting plans. The plans are negotiated on a Government fiscal year basis and are renegotiated annually for the three-year period of the test which begins October 1, 1990. The approved comprehensive subcontracting plans will apply to and shall be included in all DoD contracts with the selected contractor which are active or awarded on or after October 1, 1990, and require subcontracting plans.

[55 FR 30157, July 24, 1990]

219.702-70 Subcontract Awards to SDBs, HBCUs, and MIs.

Consistent with section 806(b)(2) of Pub. L. 100-180, contracting officers shall ensure that contractors required to submit subcontracting plans under FAR 52.219-9, also establish goals for subcontract awards to SDBs, HBCUs, and MIs. The clause at 252.219-7009, Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, also provides financial incentives for subcontract awards to such entities.

[53 FR 5125, Feb. 19, 1988, as amended at 53 FR 20629, June 6, 1988]

219.703 Eligibility requirements for participating in the program.

(a) The SBA Office of Hearings and Appeals has final authority to determine the eligibility of a concern to be designated as a small business. The contracting officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

(S-70) To be eligible as an HBCU or MI subcontractor under the program, such entity must be an HBCU or MI as defined at 226.7002.

(b)(S-70) A contractor may also rely on the written representation of an HBCU or MI as to its status. A list of HBCUs is published periodically by the Department of Education (see 226.7006).

[53 FR 5124, Feb. 19, 1988, as amended at 53 FR 20629, June 6, 1988]

219.704 Subcontracting plan requirements.

(a) Subcontracting plans for commercial items, as defined in FAR 52.219-9 and submitted pursuant to paragraph (g) of that clause, are exempt from the requirements of (a)(3) and (a)(S-70) below.

(a)(1) The percentage goal for use of SDB concerns shall be a composite goal which includes anticipated use of HBCUs and MIs as subcontractors in addition to anticipated use of SDB concerns (See 252.219-7000.

(a)(3) A description of those efforts the contractor plans to undertake to provide technical assistance to SDB concerns and to restrict competition to SDB concerns.

(a) (S-70) The subcontracting plan must address each of the requirements listed in FAR 19.704(a) as they relate to subcontracting with HBCUs and MIs. The separate percentage goal required by FAR 19.704(a)(1) concerning SDBs shall be a composite goal which includes anticipated use of HBCUs and MIs as subcontractors in addition to anticipated use of SDB concerns. (See 252.219-7000.)

[53 FR 5125, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 55 FR 19078, May 8, 1990; 55 FR 39971, Oct. 1, 1990]

219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

219.705-1 General support of the program.

In negotiating SDB goals, the contracting officer shall ensure that the limitations in FAR 19.705-1 are applied.

219.705-2 Determining the need for a subcontracting plan.

(d) For major systems acquisitions and other complex or sensitive acquisitions involving formal or alternative source selection procedures, the extent to which offerors specifically identify, and commit to, SDB, HBCU or MI participation in performance of the contract (whether as joint venture, teaming arrangement, or traditional subcontracting arrangement) shall be an evaluation factor for source selection.

[55 FR 19078, May 8, 1990]

219.705-4 Reviewing the subcontracting plan.

Any SDB goal of less than five percent of the total planned subcontracting dollars must be approved two levels above the contracting officer. This requirement does not apply to subcontracting plans for commercial products submitted in accordance with FAR 52.219-9(g) where an annual plan has already been approved.

(S-70) In reviewing the subcontracting plan to determine whether it provides the maximum practical opportunity for HBCUs and MIs to participate, the contracting officer should consider whether subcontracts are contemplated which involve research or studies of the type normally performed by higher education institutions. But see 219.704(a).

(S-71) In reviewing a subcontracting plan which proposes a goal of less than five percent for SDB concerns, the contracting officer shall consider the extent to which the offeror plans to utilize competition restricted to SDB concerns, HBCUs, or MIs.

[53 FR 5125, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 55 FR 19078, May 8, 1990]

219.705-6 Postaward responsibilities of the contracting officer.

Upon receipt of a notice submitted in accordance with FAR 19.706(a)(5), the contracting officer shall take action necessary to enforce the terms of the contract. Such action shall include, as appropriate, issuance of cure or show cause notices, or initiation of default proceedings.

[54 FR 26207, June 22, 1989]

219.706 Responsibilities of the cognizant administrative contracting officer.

Evaluation of subcontract reports. The Contract Administration Office is responsible for reviewing, evaluating, and approving master subcontracting plans. In the evaluation of subcontract reports, the SADBU Specialist shall support the Administrative Contracting Officer (ACO) in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contracts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant SADBUS. These reports together with other pertinent information shall be used as a basis for advising the ACC as to contractor's compliance with subcontracting plans.

[53 FR 5116, Feb. 19, 1988, and 53 FR 20628, June 6, 1988, as amended at 55 FR 19076, May 8, 1990]

219.708 Solicitation provisions and contract clauses.

(b) The contracting officer shall include the clause at 252.219-7000, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), in all solicitations and contracts that contain the clause at FAR 52.219-9.

(1) DoD contracting activities shall use the clause at 252.219-7015, Small Business and Small Disadvantaged Business Subcontracting Plan (Defense FAR Supplement Deviation), in lieu of the clauses at 252.219-7000, Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, in contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by section 834 of Public Law 101-189. (See 219.702(a).)

(2) DoD contracting activities shall use the clause at 252.219-7016, Liquidated Damages—Small Business Subcontracting Plan (Defense FAR Supplement Deviation), in lieu of the clause at FAR 52.219-16, Liquidated Damages—Small Business Subcontracting Plan, in contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by section 834 of Public Law 101-189 (See 219.702(a).)

(c)(1)(S-70) When contracting by negotiation, except as provided in (c)(2) and (c)(3) of this section, the contracting officer shall insert the clause at 252.219-7009, Incentive Program for Subcontracting with Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219-9. In determining the amount of the percentage of incentive to be inserted in the clause and negotiated into the contract, the contracting officer should consider the type and extent of effort which will be required for the contractor to exceed the goal; i.e. unique outreach programs; use of SDBs and HBCUs or MIs in nontraditional areas; technical assistance required to qualify or assist SDBs and HBCUs or MIs; proximity of subcontractors to the prime contractor and potential difficulties incident thereto (See also FAR 19.705-1).

(c)(1)(S-71) The contracting officer shall insert the clause at 252.219-7009 with its Alternate I when the above criterion is met and when inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small businesses in addition to SDBs, HBCUs and MIs (see FAR 19.708(c) (2) and (3). When the clause at 252.219-7009 is prescribed, the clause at FAR 52.219-10 shall not be used.

(c)(2) For negotiated procurement of $10 million or more, the contracting officer may use an award fee provision, in lieu of the incentive provision required by (c)(1) above, in order to motivate and reward a contractor for exceeding established SDB, HBCU and MI subcontracting goals. Use of an award fee provision permits the contracting officer to consider the quality and amount of contractor effort put forth to meet these goals. The award fee rating plan included in the contract shall specify those factors against which the contractor's performance will be evaluated. When an award fee provision is included in a cost-reimbursement contract, total fee shall not exceed the limitations set forth in FAR 15.903(d), and the clauses at 252.219-7009 and FAR 52.219-10 shall not be used.

(c)(3) When the clause at 252.219-7015, Small business and Small Disadvantaged Business Subcontracting Plan (Defense FAR Supplement Deviation), is prescribed, award fee provisions and the clauses at 252.219-7009, Incentive Program for Subcontracting With Small and Small Disadvantaged Business Concerns, Historically Black Colleges and Universities and Minority Institutions, and at FAR 52 219-10, Incentive Subcontracting Program for Small Business and Small Disadvantaged Business Concerns, shall not be used.

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 54 FR 26207, June 22, 1989; 55 FR 19078, May 8, 1990; 55 FR 30157, July 28, 1990]

Subpart 219.8—Contracting with the Small Business Administration (the 8(a) Program)

219.801 General.

The Department of Defense, to the greatest extent possible, will award contracts under the authority of section 8(a) of the Small Business Act and will actively identify requirements to support the business plans of 8(a) concerns.

219.803 Selecting acquisitions for the 8(a) Program.

(b) Contracting activities should respond to SBA requests for contract support within 30 calendar days after receipt. To the maximum practical extent, 8(a) concerns should be provided an opportunity to give a technical presentation to appropriate personnel within the contracting activity before a decision not to use 8(a) contracting procedures is made on the request.

(c) Notwithstanding the DoD unique SDB procedure, requirements will be reviewed initially for suitability for inclusion in the 8(a) Program; activities will continue efforts required by FAR 19.803(c) as an added measure to meet the 5 percent goal discussed in 219.201.

[53 FR 5116, Feb. 19, 1989, amd 53 FR 20628, June 6, 1988, as amended at 54 FR 26207, June 22, 1989; 55 FR 19078, May 8, 1990]

219.804-4 Repetitive acquisition.

(a) When the SBA requests that a requirement be reserved for award of a contract (follow-on or otherwise) under the 8(a) Program, the request shall be honored, if otherwise appropriate, and the total SDB set-aside procedure shall not be used.

(b) An SBA request that a new requirement be reserved for the 8(a) Program need not be honored and a contracting officer may proceed with a total SDB set-aside if the SBA request is received after publication of a synopsis pursuant to 205.207(d)(S-72) or (S-73).

[55 FR 19078, May 8, 1990]

Subpart 219.10—Small Business Competitiveness Demonstration Program

SOURCE: 54 FR 4247, Jan. 27, 1989 (Interim), and 54 FR 26207, June 22 1989 (Final) unless otherwise noted.

219.1005 Applicability.

(b) For DoD, the targeted industry categories are:

Standard industrial classification (SIC)	SIC code
(1) Pharmaceutical preparations	2834
(2) Ammunition, except for small arms	3483
(3) Ordnance and accessories, not elsewhere classified (NEC)	3489
(4) Turbines and turbine generator sets	3511
(5) Aircraft engines and engine parts	3724
(6) Guided missiles and space vehicles	3761
(7) Space vehicle equipment, NEC	3769
(8) Tanks and tank components	3795
(9) Search and navigation equipment	3812
(10) Communication services, NEC	4899

(S-70) Dredging (SIC 1629, FPDS V216-Z216). Army Corps of Engineers has responsibility for dredging.

[54 FR 4247, Jan. 27, 1989, and 54 FR 26207, June 22 1989, as amended at 54 FR 30741, July 14, 1989; 54 FR 53616, Dec. 29, 1989]

219.1070 Procedures.

219.1070-1 Designated industry groups.

(a) Solicitations for acquisitions in any of the four designated industry groups issued from January 1, 1989 through December 31, 1992 that have an anticipated dollar value greater than $25,000 shall not be considered for small business set-asides under FAR subpart 19.5 unless otherwise directed. However, acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see FAR subpart 19.8) and for small disadvantaged business set-asides (see DFARS 219.502-72).

(b) After periodic review of DoD performance, DoD may direct reinstatement of the use of small business set-asides as necessary to meet prescribed goals. Military departments and defense agencies shall not reinstate small business set-asides unless directed by DoD.

When use of small business set-asides is suspended for the four designated industry groups—

(1) The procedures under 219.501(g), and (g)(70) through (g)(73) are waived;

(2) The exceptions at 219.502-72(b) (1), (2), and (3) do not apply and the acquisitions shall be considered for small disadvantaged business set-asides; and

(3) The evaluation preference at 219.7001 shall not be applied.

(d) The small purchase exception at FAR 19.303(a) does not apply to acquisitions under this program. All written requests for quotations shall include applicable SIC code and size standard.

219.1070-2 Emerging small business set-aside.

(a) Notwithstanding FAR 13.105, 19.5 or 19.8, acquisitions in the four designated industry groups with an estimated value of $25,000 or less shall be set aside for emerging small businesses (ESBs), provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality and delivery. If no such reasonable expectation exists, the contracting officer shall proceed in accordance with FAR 13.105, FAR subpart 19.5 or FAR subpart 19.8.

(b) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with FAR 13.105 of FAR subpart 19.5.

219.1070-3 Identification and reporting.

(a) The face of each award made pursuant to the program shall contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) For reporting requirements, see 204.675.

219.1071 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in full text the provision at 252.219-7012, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the four designated industry groups. Where requests for a quotation are solicited orally, the contracting officer shall obtain the necessary information.

(b)(1) The contracting officer shall insert in full text the provision at 252.219-7013, Notice of Emerging Small Business Set-Aside, in all solicitations and resulting contracts set aside for emerging small businesses in accordance with 219.1070-2.

(2) When using other than small purchase procedures, the contracting officer shall insert the clause at FAR 52.219-14 in all solicitations and resulting contracts set aside for emerging small businesses.

(c) In an unrestricted procurement in the four designated industry groups, the clause at 252.219-7007, "Notice of Evaluation Preference for Small Disadvantaged Business Concerns," shall not be inserted.

(d) The contracting officer shall insert in full text the provision at 252.219-7014, Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of $25,000.

[54 FR 4247, Jan. 27, 1989; 54 FR 5484, Feb. 3, 1989, and 54 FR 26207, June 22 1989]

Subpart 219.70—Evaluation Preference for Small Disadvantaged Business (SDB) Concerns

219.7000 Policy.

(a) In furtherance of the Department of Defense objectives and initiatives undertaken to award acquisition in all industrial categories in which small disadvantaged businesses (SDBs) have not dominated and to meet the five percent goal for SDBs established by section 1207 of Pub. L. 99-661, section 806 of Pub. L. 100-180, and section 831 of Pub. L. 101-189 (see 219.201), offers from SDB concerns shall be given an evaluation preference in accordance with the procedures of this subpart. The evaluation preference shall only be used in competitive acquisitions (except as provided in (b) below) where award is based on price and price related factors. However, in no event may award be made at a price which exceeds fair market price (see FAR 19.806-2) by more than 10 percent.

(1) The evaluation preference shall not apply when making—

(i) Purchases using small purchase procedures;

(ii) Total SDB set-asides;

(iii) Partial set-asides for LSA concerns;

(iv) Partial small business set-asides;

(v) Total small business set-asides;

(vi) Purchases for commissary or exchange resale.

(2) The evaluation preference shall not be applied to—

(i) Otherwise low offers of (A) eligible products under the Trade Agreements Act as defined in 225.401 when the acquisition equals or exceeds the dollar threshold stated in FAR 25.402, or (B) qualifying country end products as defined in 225.001; or

(ii) Where the application would be inconsistent with a Memorandum of Understanding or any other international agreement with a foreign government (see Appendix T).

(b) Subject to the exceptions in (a) above, the evaluation preference may also be used in other competitive acquisitions, at the discretion of the source selection authority, when (1) SDBs are expected to possess the requisite qualifications, consistent with the demands of the acquisition (e.g., see FAR 35.007 with regard to technical qualification of sources) and, (2) award price will not exceed fair market price by more than 10 percent.

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 54 FR 20592, May 12, 1989; 54 FR 31038, July 26, 1989; 54 FR 53616, Dec. 29, 1989; 55 FR 19078, May 8, 1990]

219.7001 Procedures.

Offers will be evaluated so as to give preference to offers submitted by SDB concerns. Each responsive offer, other than offers from SDB concerns, shall be adjusted for the purpose of price evaluation by adding a factor of 10 percent. The factor shall be applied on a line-item by line-item basis or to any group of line items on which award may be made as specifically provided by the solicitation. However, SDB offerors may request that the evaluation preference not be applied (see 252.219-7007(b)). Other evaluation factors (e.g., transportation, rent-free use of Government facilities) shall be applied to prices offered prior to application of the factor. Offers submitted by HBCUs/MIs shall be evaluated as though they were from SDB concerns (see 252.219-7007(d)).

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 54 FR 31038, July 26, 1989]

219.7002 Contract clause.

When the evaluation preference as described in 219.7000 is used, the contracting officer shall insert the clause at 252.219-7007, Notice of Evaluation Preference for Small Disadvantaged Business Concerns. The contracting officer shall insert the clause with its Alternate I when the contracting officer determines, in coordination with the contracting activity's SADBUS, that there are no SDB manufacturers available that can meet the requirements of the solicitation.

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 54 FR 31039, July 26, 1989]

PART 220—LABOR SURPLUS AREA CONCERNS

Subpart 220.70—Labor Surplus Area Policy and Procedures

Sec.
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220.7001 General policy.
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220.7003 Partial set-asides for labor surplus area concerns.
220.7004 Subcontracting with labor surplus-area concerns.
220.7005 Depressed industries.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46189, Dec. 23, 1986, unless otherwise noted.

Subpart 220.70—Labor Surplus Area Policy and Procedures

220.7000 Scope.

(a) As authorized by FAR 20.201-2, this subpart sets forth Department of Defense policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This subpart implements Defense Manpower Policy No. 4B, 23 May 1980 (44 CFR part 331), and the Small Business Act as amended (15 U.S.C. 631), and U.S. Department of Labor Regs (20 CFR part 654). Defense Manpower Policy No. 4B states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

(b) The Defense Logistics Agency is authorized to prescribe procedures for clothing acquisitions that permit granting labor surplus area status based on first- and second-tier subcontractors, when the first-tier subcontractor is a converter.

[51 FR 46189, Dec. 23, 1986, as amended at 54 FR 11724, Mar. 22, 1989]

220.7001 General policy.

Except as provided in 220.7005 with respect to depressed industries, it is the policy of the Department of Defense to aid Labor Surplus Areas (LSA) by placing contracts with LSA concerns, to the extent consistent with acquisition objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of part 19, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of contracting activities and chiefs of contracting and contract administration offices are responsible for the effective implementation of the Labor Surplus Area Program within their respective offices. Responsibility for administration of the program shall be assigned to small business specialists appointed pursuant to part 19.

220.7002 Application of policy.

(a) Within the policy set forth in 220.7001, the following shall be applied to contracts which are estimated to exceed $25,000:

(1) Contracts shall, where acquisition objectives permit, be awarded to labor surplus area concerns; *Provided*, that in no case shall price differentials be paid for the purpose of carrying out this policy,

(2) When appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, in accordance with 220.7003 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;

(3) Each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel;

(4) When less than a complete bidders list is to be used pursuant to 214.205-4, at least a *pro rata* number of prospective LSA concerns shall be solicited;

(5) Subcontracting with concerns in LSA shall be encouraged in accordance with 220.7004.

(6)(a) See subsection 225.103 regarding acquisitions from qualifying country sources where LSA set-asides are involved.

(b) Records of the total value of all contracts in excess of $25,000 placed with LSA concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in subpart 204.6. Accordingly, each Department, in soliciting bids and proposals for any contract estimated to exceed $25,000 shall request from any offeror, or other source, any information needed to determine whether the offeror is a LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.

220.7003 Partial set-asides for labor surplus area concerns.

(a) *General.* (1)(i) In accordance with the policy set forth in 220.7001 and 220.7002 (see also 219.504) a portion of each acquisition shall be set aside for LSA concerns if:

(A) The acquisition is severable into two or more economic production runs or reasonable lots; and

(B) One or more LSA concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this conclusion, the contracting officer shall consult with the LSA specialist and may make advance inquiries to determine the number and expected classification of interested concerns.

(ii) In determining whether a proposed acquisition is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(A) Price and acquisition history of the items,

(B) Open industry capacity,

(C) Startup cost including special tooling requirements,

(D) Delivery schedule, and

(E) Nature of item and quantity being acquired.

Before a portion or portions, constituting more than 50% of the total requirement may be set aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(iii) In furtherance of the policy to assure that a fair proportion of acquisitions are placed with small business concerns, each LSA set-aside shall provide that, in addition to LSA concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to LSA concerns. In this respect, see the provisions of 220.7003(b)(2)(i) for notice to offerors, and 220.7003(b)(2)(ii) for conduct of set-aside negotiations.

(2) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) A large part of previous acquisitions of the item in question has been placed with LSA concerns;

(ii) The item to be acquired is on an established planning list under the Industrial Readiness Planning Program;

(iii) The item to be acquired is on a Qualified Products List;

(iv) A period of less than 30 (see FAR 5.203) days from the date of issuance of solicitations is prescribed for the submission of offers;

(v) The acquisition is classified; or

(vi) LSA concerns are receiving a fair proportion of contracts.

(3) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.—Canadian Defense Development Sharing Program shall not be set aside for LSA. Identification of the supplies covered by the Program will be in accordance with Departmental procedures.

(b) *Set-aside procedures.* (1) When a portion of an acquisition is to be set aside, the acquisition shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion pursuant to this part will be such as to make the maximum use of the capacity of LSA concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(2)(i) In acquisitions involving set-asides pursuant to this part, each solicitation and resulting contract shall contain the clause in 252.220-7000, Notice of Labor Surplus Area Set-Asides (except see (ii) below).

(ii) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause in 252.220-7001, Notice of Labor Surplus Area Set-Asides, may be used.

(iii) See 219.508(S-70) for use of the clause at 252.219-7004 for preference as a Labor Surplus concern.

(3)(i) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Acquisition of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the clauses required by 220.7003(b)(2) (i) & (ii) above; *provided* that, when equal low offers are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of 214.407-6 shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiations be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be acquired by sealed bidding or negotiation, as appropriate, in accordance with existing regulations. Since considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see FAR 12.101) to ensure that it is realistic in the light of all relevant factors including the capabilities of LSA concerns.

(ii) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (A) agreement as to the established set-aside price for the available set-aside quantity, (B) agreement as to the required delivery, (C) agreement that all other terms and conditions of the original solicitation will apply to the set-aside award, and (D) agreement to inclusion of the clauses *"Examination of Records by Comptroller General"* in FAR 52.215-1 and *"Audit Negotiation"* in FAR 52.215-2.

(iii) When the award of the non-set-aside portion has been made to a concern which is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (A) include a reference to the contractor's letter offering on the set-aside quantity, (B) state the price and delivery schedule applicable to the set-aside quantity, and (C) include the clauses *"Examination of Records by Comptroller General"* in FAR 52.215-1 and *"Audit Negotiation"* in FAR 52.215-2 applicable to the set-aside portion only. Copies of all pertinent documents, including the signed offer, should be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

(iv) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (ii) and (iii) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient. For purposes of Subpart 204.6, the non-set-aside and set-aside portions shall be reported separately.

(c) *Withdrawal of set-asides.* If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the acquisition by sealed bidding or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

220.7004 Subcontracting with labor surplus-area concerns.

(a) *General policy.* (1) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 220.7001 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

(2) To more effectively carry out the Government's policy objectives stated in (a) above, prime contractors and subcontractors having labor surplus area subcontracting programs must be informed of (i) the Government's evaluation of their efforts in carrying out an effective labor surplus area subcontracting program, (ii) any specific noted deficiencies in their Labor Surplus Area Subcontracting Programs, and (iii) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve its

program, the contractor should be advised in general terms as to the type of actions which will result in a reward, penalty, or no impact on profit or fee actions. Any evaluation and remarks to the contractor, including areas of suggested improvement and areas where the contractor has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

(b) *Labor surplus area subcontracting program.* The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. These obligations are in addition to those required by the minority business enterprise subcontracting program and the small business subcontracting program, FAR subpart 19.7. In contracts which range from $25,000 to $500,000, the contractor undertakes the simple obligation of using its best efforts to place subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 220.7004(c)(1). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause required by 220.7004(c)(2) to undertake a number of specific responsibilities designed to ensure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

(c) *Required clauses.* (1) The clause at FAR 52.220-3, Utilization of Labor Surplus Area Concerns, shall be inserted in all contracts which may exceed $25,000, except:

(i) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;

(ii) Contracts for services which are personal in nature;

(iii) Contracts for construction; and

(iv) Contracts with the petroleum and petroleum products industry.

(2) The clause at FAR 52.220-4, Labor Surplus Area Subcontracting Program, shall be included in all contracts which may exceed $500,000, but which contain the clause required by (c)(1) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the clause.

[51 FR 46189, Dec. 23, 1986, as amended at 53 FR 38195, Sept. 29, 1988]

220.7005 Depressed industries.

(a) *General.* When an entire industry is depressed, the Director of the Federal Emergency Management Agency (FEMA) may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by the FEMA and such industries will be given special treatment as specified therein.

(b) *Petroleum and petroleum products industry. (Notification no. 58).* There shall be no labor surplus area set-asides in this industry.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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222.1008-2 Preparation of SF 98a.
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222.1303 Waivers.
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222.1403 Waivers.
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Subpart 222.70—[Reserved]

Subpart 222.71—[Reserved]

Subpart 222.72—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7200 Policy.
222.7201 Waivers.
222.7202 Contract Clause.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46192, Dec. 23, 1986, unless otherwise noted.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.

222.101-1 General.

(S-70) Authorization shall be obtained from Departmental headquarters prior to initiating any contact on labor relation matters with a national office of any labor organization, Government department, agency or other governmental organization and shall promptly notify such headquarters of each contact by the national office of any of these organizations.

(S-71) All problems arising out of the industrial labor relations of contractors and all communications with contractors, labor organizations or Federal agencies relative thereto shall be handled in accordance with the procedures prescribed in this Section. Industrial security matters concerning contractor employees are governed by the DoD Industrial Security Regulation 5220.22R and the DoD Industrial Security Manual 5220.22M.

(S-72) Approval of the Office of the Deputy Assistant Secretary of Defense (Production Support) will be obtained on major policies relating to all labor relations matters. Recommendations for plant seizure or injunctive action relating to potential or actual work stoppages and resolution of inter-service disagreements are examples of major policy actions.

(S-73) [Reserved]

(S-74) Questions involving FAR part 22 or other contractor labor relations matters may be addressed to the appropriate departmental/agency headquarters labor advisor:

For the Army: Assistant Secretary of the Army (RDA), Attention: Labor Advisor

For the Navy: Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), OASN(S&L), CBM-CM

For the Air Force: Headquarters, AFCMD/PDC, Attention: Director of AF Contractor Industrial Relations, Kirtland Air Force Base, New Mexico 87117-5000

For the DLA: Headquarters, Defense Logistics Agency; For all matters excepting strikes and disputes—Executive Directorate Contracting, Attention: DLA-PPR; For matters involving strikes and disputes—Executive Director Contract Management, Attention: DLA-AP

For the DCA: Headquarters, Defense Communications Agency, Attention: Counsel

For the DMA: Headquarters, Defense Mapping Agency, Attention: Staff Director of Logistics

For the DNA: Headquarters, Defense Nuclear Agency, Attention: Deputy Director of Operations and Administration

For the NSA. Headquarters, National Security Agency, Attention: Director of Procurement

[51 FR 46192, Dec. 23, 1986, as amended at 53 FR 38246, Sept. 29, 1988; 54 FR 30741, July 24, 1989]

222.101-3 Reporting Labor Disputes.

When an interference is likely to occur, the CAO shall notify the contracting offices, their Heads of Contracting Activities and their Departmental headquarters labor relations office (see listing at 222.101-1(74)). Further dissemination of labor dispute information shall be made by the CAO as requested by the Departmental headquarters labor relations offices. Labor disputes should be reported on DD Form 1507, Work Stoppage Report. An initial report should be submitted when a work stoppage due to a labor dispute is imminent or when such work stoppage occurs and thereafter when a significant change occurs in the dispute situation. This reporting requirement is assigned RCS DD P&L (AR) 1153 (see 253.303-70-DD-1507).

[51 FR 46192, Dec. 23, 1986, as amended at 54 FR 53217, Dec. 29, 1989]

222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) It is the policy of the Department of Defense with respect to the movement of items from facilities affected by work stoppages to avoid the use of force or the appearance of force and to prevent the occurrence of incidents which will detrimentally affect relations with labor and management.

(b) Materials which the contractor is unable to deliver because of a work stoppage at the plant, and the delivery of which is urgent and critical to an important program, may be obtained in accordance with procedures set forth below:

(1) The contracting officer, upon the direction of the Departmental Headquarters Labor Relations Office (see listing at 222.101-1(S-74)), shall furnish a written request for removal of the material to Contract Administration Office (CAO) having cognizance over the plant. The Commander of the cognizant CAO, or representative, or the Headquarters Labor Relations Advisor shall attempt to work out an arrangement agreeable to both management and the labor representatives involved for shipment by normal means of urgently required material: Prior to making any removal, the Departmental Headquarters Labor Relations Office will solicit the opinion of the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency as to the effect the movement of items would have on negotiations. The contracting officer's request will include the following:

(i) A statement as to the urgency and criticality of the system, subsystem or item needed;

(ii) Description of items to be moved (nature of item, amount, approximate weight and cubic feet, contract number, item number etc.);

(iii) Mode of transportation by which items are to be moved if different from contract and whether by Government or commercial bill of lading; and

(iv) Destination of material if different than contract.

(2) If an arrangement in accord with (i) cannot be made, the Commander of the CAO or representative, after obtaining approval from the Departmental Headquarters Labor Relations Office, may seek the concurrence of parties to the dispute to permit movement of the required material by military vehicles with military personnel to the extent needed. On receipt of such concurrences, the Commander of the CAO may proceed to make necessary arrangements to move the material.

(3) If satisfactory arrangements under (i) and (ii) cannot be made, the matter shall be referred to the Departmental Headquarters Labor Relations Office with the information required by 222.101-70(b). If that office is unsuccessful in obtaining the voluntary concurrences of the parties for movement of the material involved and further action to obtain the material is deemed necessary, the matter shall be referred to the DASD(A&L)(PS).

(4) Upon review and verification that the material is urgently or critically needed and cannot be moved with the consent of the parties, the DASD(A&L)(PS) may request the Secretary of the Department to order removal of the material from the plant or plants involved.

222.101-70 Impact of labor disputes on defense programs.

(a) Each Department shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements, considering among others the following factors:

(1) Whether the dispute involves a product, project (including construction) or service which must be obtained in order to meet schedules of urgently needed military programs or requirements; or

(2) Whether alternative sources of supply for the product, project, or service involved are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Within each department, the contracting activity involved shall obtain and develop data reflecting the impact of a dispute on requirements and programs. Upon determining the impact, the Head of the Contracting Activity shall submit through appropriate channels a report of findings, together with recommendations, to the headquarters labor relations office originally notified pursuant to FAR 22.101-3. Such report shall be in narrative form and shall include the following information:

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A statement indicating the degree of impact, relating specific items or construction involved to the programs or requirements affected;

(3) Identity of alternate sources available to furnish supply or service within the time required, and

(4) A description of any action taken to reduce impact.

(c) Reports of impact shall be made to the Office of the Deputy Assistant Secretary of Defense (A&L)(PS).

(1) Upon specific request; or

(2) When considered by the Department to be of sufficient urgency to warrant the attention of the DASD(A&L)(PS).

(d) Report submitted in accordance with (c) above shall be developed by the headquarters labor relations office concerned and shall cover the following areas of fact, as appropriate:

(1) *Description of military program, project, or service*—Identify item, project, or service which will be or is being affected by the work stoppage, describing its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials identify the end item(s) for which used.

(2) *Requirements and assets*—State requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For *production programs* include requirements for each using military service. Where applicable, state in detail production schedules, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For *projects*, describe the potential adverse effects of a delay in meeting schedules and explain how a security disadvantage would result from such a delay. Attention should be given to feature any relative loss in balance of strength vis-a-vis potential enemies' capabilities.

(iii) For *services*, describe how a loss or interruption affects ability to support defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact*—Describe:

(i) Capabilities, if any, to substitute items or to use alternate sources. (Note how many other facilities are available and the relative capabilities of such facilities in meeting total requirements.);

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) Feasibility of transfer of assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion: Impact on operations of a 15-30, of a 30-60, and of a 60-90 day work stoppage*—Degree of criticality of a program, project, or service resulting from a work stoppage will be projected on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the time required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101-71 Acquisition of stevedoring services during labor disputes.

When stevedoring services are furnished by a contractor to a Department, and the performance under the contract, although urgently required, is delayed through a labor dispute, the following procedures shall be utilized in the order of priority listed. Each successive procedure shall be used only when the preceding steps are inadequate.

(a) An attempt shall be made to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(b) Vessels shall be diverted to alternate ports able to provide necessary stevedoring services.

(c) Consideration shall be given to contracting with reliable alternative sources of supply within the stevedoring industry.

(d) Civil service stevedores shall be utilized to perform the work therefor performed by contract stevedores.

(e) Military personnel shall be utilized to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(f) When the exigencies of a situation require deviation from the procedures outlined above, the Departmental headquarters labor advisor (see listing at 222.101-1(S-74)) shall be promptly notified.

222.102 Federal and State labor requirements.

222.102-2 Administration.

(a)(S-70) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. Contractors or contractor employees who inquire concerning applicability or interpretation of Occupational Safety and Health Administration regulations shall be advised that ruling(s) concerning such matters fall within the jurisdiction of the U.S. Department of Labor, and shall be given the address of the appropriate field office of the Occupational Safety and Health Administration of the U.S. Department of Labor.

[54 FR 30741, July 24, 1989]

222.102-70 Applications by contractors for relaxation of requirements.

(a) Departments shall not initiate applications of any kind for suspension or relaxation of labor requirements without prior coordination of the Departmental headquarters labor advisor (see listing at 222.101-1(S-74)). They may, however, support such applications by contractors or suppliers when all of the following circumstances and conditions have been met:

(1) The interested contractor or supplier has filed his application for relaxation of the laws, orders or regulations involved with the appropriate Governmental official charged with the enforcement of such labor requirements applicable to the contract involved;

(2) The required products or services are in short supply and unless the application is granted, production schedules for critically needed military material cannot be met;

(3) There is no alternative source of supply reasonably available to furnish the products or services within the period of time delivery is required;

(4) There is no practicable possibility of taking action (such as recruiting, training, and more effective utilization of manpower) as an alternative to relaxation of applicable Governmental labor requirements;

(5) The apparent supply of labor, and in particular of critical skills, is limited, and it is not practicable to set up new production lines or to use additional facilities as an alternative to the relief requested; and

(6) The granting of the application will not result in an excessive increase in hours or work, an unreasonable curtailment of rest and lunch periods, an undesireable impairment of working conditions, or otherwise adversely affect the productivity of the facility involved.

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Departmental headquarters labor advisor (see listing at 222.101-1(S-74)). Such requests shall contain the following information:

(1) The facilities and services involved and affected;

(2) Provision(s) of law which require relaxation;

(3) Criticality or relative scarcity of the material;

(4) Circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(5) Remedial action being taken by the manufacturer (e.g., training, recruiting, more effective utilization of manpower);

(6) The most limited relaxation of the requirement necessary for completion of the specific work; and

(7) The approximate period of time required for completion of the work.

(c) Consistent with the limitations of security and the foregoing requirements, contract information may be furnished to the appropriate Governmental official, upon request, in connection with an application of a contractor or supplier for relaxation of a labor requirement as to the execution of a contract in pursuance of a military acquisition program.

222.103 Overtime.

222.103-1 Approvals.

The Deputy Assistant Secretary (Acquisition), Office of the Assistant Secretary of the Army (Research Development and Acquisition), for the Army; the Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), Deputy Director, Contracts & Business Management, for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters, USAF, for the Air Force; the Executive Director for Contracting, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Assistant to the Director for Administration, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, officers and civilian officials for the purpose of approving overtime premiums at Government expense. Such approval may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. When two or more contracting offices have current contracts at a single facility, and the approval of overtime by one contracting office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a contracting office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another contracting office.

Subpart 222.4—Labor Standards for Contracts Involving Construction

SOURCE: 54 FR 30741, July 24, 1989, unless otherwise noted.

222.403 Statutory and regulatory requirements.

222.403-1 Department of Labor regulations.

If a question arises relating to the application and interpretation of wage determinations (including the classifications therein), the Department concerned should attempt to resolve it with the appropriate office of the Department of Labor. In any case in which resolution of the question by higher authority within the contracting agency is deemed appropriate, such question shall be submitted via appropriate channels to the Departmental Labor Advisor (see 222.101-1(S-74)).

222.404 Davis-Bacon Act wage determinations.

(S-70) Not later than 1 April of each year, each Department shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year indicating by individual project the anticipated type of construction, the estimated dollar value, and the location in which the work is to be performed (city, town, village, county or other civil subdivision of the state). Individual projects less than $500,000 need not be reported. The report format is contained in Department of Labor All Agency Memo 144, 27 December 1985. The report control number is 1671-DOL-AN. The Department of Labor uses this information to determine where General Wage Determination surveys will be conducted.

222.404-2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved, shall be obtained from the appropriate District Commander, Corps of Engineers, for the Army, from the cognizant Naval Facilities Engineering Command Division for the Navy, from the appropriate Regional Industrial Relations Office for the Air Force, and from the appropriate Defense Logistics Agency Region (ATTN: Industrial Labor Relations Office) for the Defense Logistics Agency.

222.404-3 Procedures for requesting wage determinations.

(b) *Requests for Project Wage Determinations.* Requests for project wage determinations shall be initiated and forwarded to the Department of Labor as follows:

(1) *For the Army:* SF 308 shall be initiated by the office responsible for the preparation of specifications or the awarding of contracts, and shall be forwarded in duplicate to the appropriate District Commander. The original SF 308 shall be sent by the District Commander to the Department of Labor.

(2) *For the Navy:* Within the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications. The original SF 308 shall be sent to the Department of Labor with a copy of the cognizant Naval Facilities Engineering Command Division Office. Requests relating to contracts of other commands or offices should be processed through the cognizant Naval Facilities Engineering Command Division Office.

(3) *For the Air Force:* Requests shall be initiated by a civil engineering office in cases where it is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities. The origi-

nal SF 308 shall be submitted to the Department of Labor. One copy of the SF 308 shall be forwarded to the appropriate Air Force Regional Industrial Relations Office and one copy retained in the requesting office's files.

(4) *Defense Logistics Agency:* Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts. The original SF 308 shall be sent to the Department of Labor with a copy to Headquarters, DLA, ATTN: Industrial Labor Relations (DLA-PRS).

(c) *Time for Submission of Requests.* When due to an emergency, a wage determination is required immediately, the requiring activity shall request assistance from the appropriate office listed under 222.404-3(b).

(e) *Review of Wage Determinations.* The requesting office shall inform the appropriate office indicated in 222.404-3(b) of any changes considered to be necessary or appropriate to correct errors in a wage determination.

222.404-11 Wage determination appeals.

A copy of a petition for review filed by the contracting agency shall be sent to the Departmental Labor Advisor (see 222.101-1 (S-74)).

222.406 Administration and enforcement.

222.406-1 Policy.

(a)(5) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities.

(a)(6) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction Letters and Conferences.*

(S-70) *Preconstruction Letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to:

(i) Employment of foremen, laborers, mechanics, and others;

(ii) Wages and fringe benefits payments, payrolls and statements;

(iii) Differentiation between subcontractors and suppliers;

(iv) Additional classifications;

(v) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(vi) Penalties and sanctions for violations of labor standards provisions; and

(vii) The provisions of FAR 22.403 which may be of consequence in contract performance. The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland ("Anti-Kickback") Act, and parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, Code of Federal Regulations). Executive Order 11246 (Equal Employment Opportunity) also may be covered in this letter. Prime contractors shall also be advised to send a copy of the preconstruction letter to each subcontractor.

(S-71) *Preconstruction Conference.* The contracting officer shall confer with the contractor and such subcontractors as the prime contractor designates to emphasize their labor standards obligations under the contract, when the prime contractor has not performed previous Government construction contracts or has experienced difficulty in complying with labor standards requirements on previous contracts, or when for other reasons the contracting officer considers such action warranted. Such conferences should be held prior to the beginning of construction. During the conference, the contracting officer should determine whether the contractor and his subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter is indicated, the contractor shall be advised of the requirements of FAR 22.406-2.

222.406-6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 of equivalent must submit a

best copy available

pages tightly bound

DD Form 879, Statement of Compliance, with each payroll report.

222.406-8 Investigations.

(a)(S-70) The investigator shall comply with the following:

(i) The contract shall be checked for inclusion of labor standards provisions and the wage determination. The contract file shall be checked for completeness of the following items, if applicable:

(A) List of subcontractors,

(B) Payrolls and payroll statements for the contractor and subcontractors,

(C) Approvals of additional classifications,

(D) Data regarding apprentices and trainees as required by FAR 22.406-4,

(E) Daily inspector's report or other inspection reports,

(F) Employee interview statements, and

(G) Statement and Acknowledgment, Standard Form 1413.

(ii) Contractors' and subcontractors' weekly payrolls and payroll statements should be checked for completeness and accuracy with respect to the following items:

(A) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(B) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(C) Computation of daily and weekly hours;

(D) Computation of time-and-one-half for work in excess of 40 hours per week in accordance with FAR 22.406-2(c);

(E) Gross weekly wages;

(F) Deductions;

(G) Computation of net weekly wages paid to each employee;

(H) Ratio of helpers, apprentices and trainees to labors and mechanics;

(I) Apprenticeship and trainee registration and ratios; and

(J) Computation of fringe benefits payments.

(iii) The contractor shall be informed in advance by the investigator that he is investigating compliance with pertinent contract labor standards provisions, and outline the general scope of the investigation, which includes examining pertinent records and interviewing employees. The names of the employees to be interviewed shall not be divulged to the contractor. At this time, the investigator shall verify the exact legal name of the firm, its address, and the names and titles of principal officers. If verification of the investigator's authority is requested, he shall provide an appropriate letter from the contracting officer to the contractor.

(iv) Complaint investigations shall include an interview with the complainant, except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, its omission shall be explained in the investigator's report.

(v) Contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, and fringe benefits payments records shall be compared with submitted payrolls. When discrepancies are found, pertinent excerpts or copies of the records shall be included in the investigation report as provided in paragraph (a)(S-70)(vi) below, together with a statement of the discrepancy and any explanation obtained by the investigator. In cases where wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor as provided in FAR 22.406-2(a)(3), the contractor's records shall be examined to ensure that such approval has been obtained and that any requirements specified in the approval have been met.

(vi) The contractor's records shall be transcribed whenever they contain information at variance with payrolls or other submitted documents. The transcriptions shall be made in sufficient detail to permit them to be used to check computations of restitutions and to determine amounts to be withheld from the contractor. Transcriptions shall follow the form used by the contractor. Comments or explanations concerning the transcriptions shall be placed on separate memoranda or in the narrative report.

(vii) The investigator shall interview a sufficient number of employees or former employees, representative of all classifications, to develop information regarding method and amount of payments, deductions, hours worked, and type of work performed. Standard Form 1445, "Labor Standards Interview", shall be used for employee interviews. Employees shall be interviewed during working hours at the job site if the interview can be conducted privately. Former employees or others may be interviewed elsewhere. Interviews shall be arranged to cause the least inconvenience to the employer and the employee. When personal interviews are impractical, information may be obtained by mail. The investigator shall not disclose to the employee any information finding, recommendation, or conclusion relating to the investigation, except to the extent necessary to obtain the required information. An emloyee's statement shall not be divulged to his employer, nor to anyone other than Government representatives working on the case, without the employee's written permission. The investigator shall request the employee to sign his statement, and to initial any changes thereto, and shall indicate his evaluation of the employee's credibility.

(viii) An interview of the foreman serves to provide information concerning the contractor's compliance with the labor standards provisions with respect to the employee under the foreman's supervision, and the correctness of the foreman's classification as a supervisory employee. All the conditions established for conduct of employee interviews, and the recording and use of data obtained, also apply to foreman interviews.

(ix) The investigator shall determine whether the wage determination decision, any modifications thereto, and any additional classifications are posted as required.

(x) Whenever information indicating possible violations has been developed, the investigator shall interview the contractor involved. At the outset of the interview, the contractor shall be advised that the purpose of the interview is only to obtain such data the contractor may desire to present in connection with the investigation, and that the interview does not mean that a violation has been found or that a requirement for corrective action exists. During the interview, the investigator shall not disclose the identity of any individual who filed a complaint, or whom he has interviewed.

(a)(S-71) The investigator's report shall include at least the following:

(i) Basis for the investigation, including the name of the complainant;

(ii) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principal officers;

(iii) Contract number, date, dollar value of prime contract, and date and number of wage determination therein;

(iv) Description of the contract and subcontract work involved;

(v) Summary of the findings with respect to each of the items listed in 222.406-8(a)(S-70);

(vi) Concluding statement concerning:

(A) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(B) Whether violations are considered to be willful, or due to the negligence of the contractor or his agent;

(C) The amount of funds withheld from the contractor; and

(D) Other aspects of violations found.

(vii) The exhibition portion of the report, indexed and appropriately tabbed, including copies of the following when applicable:

(A) Complaint letter;

(B) Contract wage determination;

(C) Preconstruction letter and memorandum of preconstruction conference;

(D) Payrolls and statements indicating violations;

(E) Transcripts of pertinent records of the contractor, and approvals of fringe benefits payments;

(F) Employee interview statements;

(G) Foreman interview statements;

(H) Statements of others interviewed, including Government personnel;

(I) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(J) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(K) Receipts and cancelled checks.

(c)(4) Where a notification to the contractor informs the contractor of his liability for Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages, the contractor shall be advised that pursuant to 40 U.S.C. 330(c), a contractor has 60 days after such notice in which he may request relief from an assessment of liquidated damages. The contractor's appeal must demonstrate that the CWHSSA violations did not occur, were improperly computed, or occurred inadvertently notwithstanding the exercise of due care. The notification shall be provided the contractor by certified mail.

(d)(1) The contracting officer shall forward, in accordance with (d)(2)(S-70) below, a report in duplicate which shall include at least the following:

(i) Standard Form 1446, "Labor Standards Investigation Summary Sheet";

(ii) His findings;

(iii) Statement as to the disposition of any contractor rebuttal to the findings;

(iv) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(v) Statement as to the disposition of funds available;

(vi) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(vii) The exhibit portion of the report which shall include, when applicable:

(A) Investigator's report;

(B) Copy of contractor's written rebuttal or a summary of the oral rebuttal of the contracting officer findings;

(C) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and contractor's letter of acceptance or rejection;

(D) Evidence of payment by the contractor of restitution or liquidated damages, such as copies of receipts, cancelled checks, or supplemental payrolls; and

(E) Letter from the contractor requesting relief from the liquidated damages provisions of the CWHSSA.

(d)(2)(S-70) Contracting officers shall forward detailed enforcement reports or summary reports through channels as specified in paragraphs (d)(2)(S-70) (A) through (D) below. When the contracting officer concludes that a criminal statute has been violated, he shall forward one extra copy of the report through the channels specified.

(A) *Army Contracts.* The report, together with the recommendation of the Head of the Contracting Activity, shall be forwarded through channels to the Labor Advisor.

(B) *Navy Contracts.* On contracts of the Naval Facilities Engineering Command, the report shall be forwarded through channels to the Commander. On contracts of other contracting activities, the report shall be forwarded through channels to the Office of the Assistant Secretary of the Navy, Attention: CBM-CM.

(C) *Air Force Contracts.* The report shall be forwarded to the appropriate Air Force Regional Industrial Relations Office for review and evaluation. The Air Force Regional Industrial Relations Office shall forward it, with the findings and recommendations, to HQ AFCMD/PDC, Attention: Director, Air Force Industrial Relations, for evaluation and final disposition. Reports involving criminal violations shall be referred to the nearest Office of Special Investigations District Officer for review and disposition.

(D) *Defense Logistics Agency Contracts.* The report shall be forwarded together with the recommendation of the Head of the Contracting Activity to Headquarters, Defense Logistics Agency, Attention: DLA-AP.

222.406-9 Withholding from or suspension of contract payments.

(a)(S-70) When payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon Act and/or CWHSSA wage underpayments or liquidated damages, the contracting officer shall contact the Departmental Labor Advisor (see listing at 222.101-1(S-74)) if assistance is needed.

(c)(1) *Forwarding Wage Underpayments to the Comptroller General.* The Standard Form 1093 shall be sent to: U.S. General Accounting Office, Claims Group/GGD, Payment Branch, 441 G Street, NW, Washington, DC 20548.

(c)(3) The Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings, when disposition of withheld funds remains the final action necessary to close out a contract.

(c)(4) *Liquidated Damages.* Whenever the sum of liquidated damages is $500 or less, and the violations are found to be nonwillful, or inadvertent, and to have occurred notwithstanding the exercise of due care by the contractor or his agent, or the sum is incorrect, the agency head or his designee may waive or adjust such liquidated damages. Whenever the liquidated damages exceed $500, the agency head or his designee may recommend to the Administrator, Wage and Hour Division, that assessed liquidated damages be adjusted because incorrect, or waived because the violation was nonwillful, or inadvertent, and occurred notwithstanding the exercise of due care.

222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) The contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division, shall be forwarded through the Departmental Labor Advisor (see listing at 222.101-1(S-74)).

222.406-13 Semiannual enforcement reports.

The report shall not include information from investigations conducted by the Department of Labor. The report shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA:

(a) Period covered;

(b) Number of prime contracts awarded;

(c) Total dollar amount of prime contracts awarded;

(d) Number of contractors/subcontractors against whom complaints were received;

(e) Number of contractors/subcontractors found in violation;

(f) Amount of wage restitution found due under:

(1) Davis-Bacon Act,

(2) CWHSSA;

(g) Number of employees due wage restitution under:

(1) Davis-Bacon Act,

(2) CWHSSA;

(h) Amount of liquidated damages assessed under the CWHSSA;

(i) Prework activities:

(1) Number of compliance checks performed,

(2) Preconstruction letters sent.

Reports shall be forwarded through the HCA to the Departmental Labor Advisor (see listing at 222.101-1(S-74)) within 15 days following the end of the reporting period.

222.407 Contract clauses.

(S-70) *Contracts With a State or Political Subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses prescribed in this Subpart shall be inserted therein, but shall be prefaced by the following provision:

> The Contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604-2 Regulatory exemptions.

(c) In addition to the requirements contained in FAR 22.604-2(c) regarding head of agency requests to the Secretary of Labor for exemption of contracts or classes of contracts from any or all stipulations of the Walsh-Healey Public Contracts Act, all applications for such exemptions shall (1) contain pertinent data (including a statement of justification) and recommendation and (2) be submitted through contract channels to the departmental headquarters labor relations advisor (see listing at 222.101-1(S-74)).

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.

222.804-2 Construction.

(b) Requests for instructions shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; Executive Director for Contracting, for the Defense Logistics Agency; Director of Procurement, for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; and Staff Director of Logistics, for the Defense Mapping Agency.

[51 FR 46192, Dec. 23, 1986, as amended at 53 FR 38237, Sept. 29, 1988]

222.805 Procedures.

(a)(2) A listing of Department of Labor regional offices can be found at FAR 22.609 (in using the listing, replace "Wage and Hour Division" with "Office of Federal Contract Compliance Programs").

[51 FR 46192, Dec. 23, 1986, as amended at 53 FR 38237, Sept. 29, 1988]

222.806 Inquiries.

(b) Matters requiring the attention of OFCCP, Washington, DC Headquarters shall be forwarded to the departmental labor advisor (see listing at 222.101-1(S-74)) for referral to the Director, OFCCP.

222.807 Exemptions.

(c) The contracting officer's justification for exemption shall be submitted through appropriate contracting channels to the departmental labor advisor (see listing at 222.101-1(S-74)) for departmental coordination and submission, if favorably endorsed, to the Deputy Assistant Secretary of Defense (Production Support) (DASD(A&L)(PS)). If the request is submitted under FAR 22.807(a)(1), the DASD(A&L)(PS) shall forward it to the Secretary of Defense for granting of the exemption, and if the exemption is granted, shall notify the Director, OFCCP within 30 days of such action. If the request is submitted under FAR 22.807(a)(2) or FAR 22.807(b)(5), the DASD(A&L)(PS) shall forward it to the Director, OFCCP.

Subpart 222.10—Service Contract Act of 1965, as Amended

SOURCE: 54 FR 30744, July 24, 1989, unless otherwise noted.

222.1003 Applicability.

222.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(S-70) *Requests for limitations, variations, tolerances, and exemptions.* The contracting officer shall submit in writing requests for exemption from the Act through Departmental channels, as appropriate, to the Labor Advisor (see 222.101-1(S-70)). The Labor Advisor shall effect necessary coordination and submit the request, if endorsed, to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

222.1003-7 Questions Concerning Applicability of the Act.

Contracting officers may contact the Departmental Labor Advisor by telephone for informal advice concerning the applicability of the Act to a specific acquisition. Requests for a formal determination as to the Act's applicability shall be submitted to the Departmental Labor Advisor in writing through appropriate channels.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008-2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of the cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and non-Directory) expected to be utilized. When the statement of work job title, for which there is a Directory equivalent, differs form the Directory job title, the contracting officer shall make a written cross-reference either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(c) The SF 98a shall include classifications and minimum hourly wage rates conformed under any predecessor contract and so noted as such. Where a previously conformed classification is not included in the Directory, the job description shall also be attached to the SF 98a.

222.1008-7 Required time of submission of notice.

(e) Requests for immediate wage determination responses to emergency acquisitions shall be made through the Departmental Labor Advisor (see listing at 222.101-1(S-74)). If the request is justified, the Labor Advisor shall contact cognizant Department of Labor headquarters officials regarding the requirement.

222.1014 Delay of acquisition dates over 60 days.

(S-70) *Requests to determine whether initial wage determination is current (up-date requests).* Up-date requests shall be forwarded in writing directly to the Wage and Hour Division. The up-date request shall state that one or more procurement dates on the original Notice have been delayed more than 60 days and will further list the new procurement dates. A copy of the original Notice and SF 98a shall be attached as enclosures. Contracting officers shall provide the Departmental Labor Advisor an information copy of the up-date request with all enclosures.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1303 (a) and (b) via appropriate contracting channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101-1(S-74)) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the OASD(A&L)(P for waiver by the Secretary of Defense. Only the Secretary of Defense may make waivers under FAR 22.1303.

222.1306 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 22.1306. The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a request for waiver under FAR 22.1403 (a) and (b) via appropriate contracting channels to the departmental or agency headquarters contractor labor relations advisor (see 222.101-1(S-74) for listing of advisors). If the waiver request is justified, the advisor shall endorse the request and forward it to the OASD(A&L)(P) for waiver by the Secretary of Defense.

Only the Secretary of Defense may make waiver under FAR 22.1403.

222.1406 Complaint procedures.

Each complaint received shall be forwarded by the contracting officer as indicated in FAR 12.1406 (see FAR 22.609 for listing of Department of Labor regional/area offices). The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

[51 FR 46192, Dec. 23, 1986, as amended at 53 FR 38237, Sept. 29, 1988]

Subpart 222.70—[Reserved]

Subpart 222.71—[Reserved]

Subpart 222.72—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7200 Policy.

(a) Except as provided in (b), Section 8078 of the 1986 Defense Appropriations Act, Pub. L. 98-190, and similar sections in subsequent Defense Appropriations Acts, require that notwithstanding any other provision of law, every contract for construction or services to be performed in whole or in part within the State of Alaska or the State of Hawaii shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract work within the particular state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) This section shall not apply—

(1) When the unemployment rate in Alaska is less than the national average rate of unemployment as determined by the Secretary of Labor; or

(2) To contracts to be performed in whole or in part within the State of Hawaii unless the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

(c) This section shall not apply to contracts to be performed in whole or in part within the State of Hawaii unless the unemployment rate in Hawaii is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

[51 FR 46192, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987; 53 FR 6155, Mar. 1, 1988; 53 FR 51560, Dec. 22, 1988; 54 FR 2258, Jan. 19, 1989; 55 FR 19078, May 8, 1990]

222.7201 Waivers.

This section may be waived by the Secretary of Defense, the Deputy Secretary of Defense, the Under Secretary of Defense for Acquisition, and any Secretary, Undersecretary, or Assistant Secretary of the Army, Navy, and Air Force, in the interest of national security. Requests for waiver shall be processed in accordance with Departmental or agency procedures.

[51 FR 46192, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987]

222.7202 Contract Clause.

The contracting officer shall insert the clause of 252.222-7002, Restrictions on Employment of Personnel, in all solicitations and contracts in accordance with 222.7200.

PART 223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 223.3—Hazardous Material Identification and Material Safety Data

Sec.
223.300 Scope of subpart.

Subpart 223.70—Safety Precautions for Ammunition and Explosives

223.7001 Definition.
223.7002 Policy and contract clauses.
223.7003 Preaward considerations.
223.7004 Postaward considerations.

Sec.

Subpart 223.71—[Reserved]

Subpart 223.72—Hazardous Material Identification and Material Safety Data

223.7200 Scope of subpart.
223.7201 Definitions.
223.7202 Policy.
223.7203 Contract clause.

Subpart 223.73—Notice of Radioactive Material

223.7300 Requirements.
223.7301 Contract clause.

Subpart 223.75—Drug-Free Work Force

223.7500 Scope of subpart.
223.7501 Policy.
223.7502 Definitions.
223.7503 General.
223.7504 Contract clause.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46197, Dec. 23, 1986, unless otherwise noted.

Subpart 223.3—Hazardous Material Identification and Material Safety Data

223.300 Scope of subpart.

The Department of Defense has granted itself a deviation to FAR 23.3. DoD agencies shall follow policies and procedures set forth in 223.72 rather than the coverage in FAR 23.3.

[54 FR 30745, July 24, 1989]

Subpart 223.70—Safety Precautions for Ammunition and Explosives

223.7001 Definition.

The term "ammunition and explosives", as used in this subpart, means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in any of the following: bulk form, ammunition, rockets, missiles, warheads, devices, and components thereof, except for wholly inert items.

223.7002 Policy and contract clauses.

(a) The requirements of DoD 4145.26-M, "DoD Contractors' Safety Manual for Ammunition and Explosives", are to be applied to all contracts involving ammunition or explosives. To accomplish this policy, all solicitations/requests for quotations, and resulting contracts involving development, testing, research, manufacturing, handling, loading, assembling, packaging, storage, transportation, renovation, demilitarization, modification, repair, disposal, inspection, or other use of ammunition and explosives shall include, in its entirety, the clause set forth in 252.223-7001, except as noted below:

(i) The clause is not to be included in contracts solely because of inert components containing no explosives, propellants, or pyrotechnics.

(ii) The clause is not to be included in contracts which are solely for flammable liquids, acids, oxidizers, powdered metals, or other materials having fire or explosive characteristics. However, the clause shall be included in contracts which require the use or incorporation of such materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or a weapon system.

(iii) When work is to be performed on a Government-owned installation, ammunition and explosives regulations of the DoD Component or installation for handling ammunition and explosives may be used to supplement or substitute for DoD 4145.26-M (the manual). The regulations used to supplement or substitute for the manual must be cited in the contract.

(b) The purpose of incorporating the DoD Manual into the contract is to minimize the potential for mishaps that could interrupt DoD operations, delay project/product completion dates, adversely impact upon DoD production base or capabilities, damage or destroy DoD-owned material/equipment, or cause injury to DoD personnel.

(c) The clause at 252.223-7002 shall be inserted in all solicitations and contracts containing the clause at 252.223-7001.

223.7003 Preaward considerations.

(a) The contracting officer shall obtain a preaward ammunition and explosives safety survey before awarding any contract (including purchase orders) involving ammunition and explosives. When the prospective contractor proposes subcontracting any ammunition and explosives work, the preaward safety survey will also include the subcontractor(s) facility.

(b) Omission of the clause from solicitations and contracts referred to in 223.7002, or waiver of mandatory requirements of the manual prior to contract award, must be approved by the HCA or designee. When mandatory requirements of the manual are to be waived prior to award, the specific requirements to be waived must be set forth in the solicitation or by modification thereto. When requested deviations from mandatory requirements of the manual are rejected by the HCA or designee, but the prospective contractor proposes corrective action acceptable for compliance, then the contractor's proposed corrective actions must be set forth in the schedule of the resulting contract. All requested waivers, deviations, or omissions of the clause must be reviewed by safety personnel responsible for ammunition and explosives safety prior to forwarding for HCA or designee approval.

(c) In contracts involving shipment of ammunition and explosives, applicable Department of Transportation (DOT)/Military Traffic Management Command (MTMC) requirements and other needed transportation, packaging, marking, and labeling requirements will be addressed within the schedule of the contract.

(d) The contracting office will include instructions within the contract concerning final disposition of excess (to include defective/reject) Government-Furnished Material (GFM) containing ammunition and explosives.

223.7004 Postaward considerations.

(a) Compliance with the standards required by the clause is the responsibility of the contractor (see 242.302(a)(39)). Contract administration personnel have the responsibility to verify that these contract requirements are being implemented in a manner which will tend to reduce or eliminate the probability of a mishap occurrence to the maximum extent practicable. As provided in the clause, the standards of the manual are to be applied only to the contractor's operations relating or exposed to ammunition and explosives.

(b) The contracting officer will review contractor requests for waiver of contractual safety standards and submissions for site plan modification or construction review. The manual requires the contractor to submit these requests through the ACO. If the request for review does not include the ACO review and recommendation, coordination with the ACO or return of the submission to the ACO is required. The contracting officer must also obtain a review and recommendation from the appropriate servicing safety department responsible for ammunition and explosives safety. The approval/disapproval determination by the contracting officer should be made to the contractor, through the ACO, as soon as practicable.

(c) *Subcontracts.* (1) The clause at 252.223-7001 requires the contractor to notify the contracting officer prior to placing subcontracts for ammunition and explosives. When notifications are received, the contracting officer should, in coordination with safety personnel, request supporting contract administration in accordance with FAR 42.204, and should normally request supporting administration when the nature of the subcontract work potentially endangers Government property, Government personnel, production capability or contract completion.

(2) When a preaward safety survey identifies areas in which the subcontractor is in noncompliance with the manual and those noncompliances could be corrected prior to the starting up of production, the contracting officer shall require a preoperations survey to verify that the corrections have been made.

(3) When postaward safety reviews by the Government uncover safety deficiencies in the subcontractor's operation (whether or not they are immediately corrected or correctable), the cognizant ACO for the subcontractor shall be informed. The ACO cognizant of the subcontractor shall immediately notify the ACO cognizant of the prime contractor, who shall formally notify the prime contractor of the subcontractor deficiencies requiring correc-

tion. In the event of critical safety deficiencies, the foregoing notifications shall be accomplished by the most expeditious means available.

Subpart 223.71—[Reserved]

Subpart 223.72—Hazardous Material Identification and Material Safety Data

SOURCE: 54 FR 30745, July 24, 1989, unless otherwise noted.

223.7200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous material.

223.7201 Definitions

Hazardous material is defined in the latest version of Federal Standard No. 313. (Federal Standards are sold to the public and Federal agencies through: General Services Administration (3FFN), Room 6622, 7th and D Streets, SW., Washington, DC 20407.)

223.7202 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

(1) All hazards to which they may be exposed;

(2) Relative symptoms and appropriate emergency treatment; and

(3) Proper conditions and precautions for safe use and exposure.

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, the apparently successful offeror is required to submit hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDSs)) are required on the following:

(1) All times in, or ordinarily cataloged under, the Federal Supply Classes listed in table I of appendix A of the latest version of Federal Standard No. 313.

(2) Items having hazardous characteristics in the Federal Supply Classes listed in table II of appendix A of the latest version of Federal Standard No. 313.

(3) Any other material designated by the technical representative of the contracting activity as potentially hazardous and requiring safety controls. Technical personnel are required to identify items that in their professional opinion will involve exposure of Government personnel to hazardous materials in any manner (e.g., performance of work use, handling, manufacturing, packaging, storage, inspection, disposal, or any other use) after delivery to the Government-designated destination.

(d) The clause at 252.233-7004, Hazardous Material Identification and material Safety Data, requires submission of MSDSs by the apparently successful offeror prior to contract award, unless the offeror certifies that the supplies are not hazardous.

(e) The contracting officer shall provide a copy of MSDSs received from apparently successful offerors to the cognizant safety officer and/or other designated official, in order to facilitate:

(1) Inclusion of relevant data in an agency MSDS information system, if applicable; and

(2) Other control, safety, or information purposes, as applicable.

223.7203 Contract clause.

The contracting officer shall insert the clause at 252.223-7004, Hazardous Material Identification and Material Safety Data, in solicitations and contracts when one or more of the circumstances listed in 223.7202(c) exists.

Subpart 223.73—Notice of Radioactive Material

SOURCE: 54 FR 30745, July 24, 1989, unless otherwise noted.

223.7300 Requirements.

(a) The contract clause at 252.223-7005 requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The contract clause permits the contracting officer to waive the notification if the contractor certifies that a notification on prior deliveries is still accurate. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 252.223-7005 the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

223.7301 Contract clause.

The contracting officer shall insert the clause at 252.223-7005, Notice of Radioactive materials, in solicitations and contracts for supplies which are, or which contain: (a) Radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram, or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses, and identification markers.

Subpart 223.75—Drug-Free Work Force

SOURCE: 53 FR 37764, Sept. 28, 1988, unless otherwise noted.

223.7500 Scope of subpart.

This subpart prescribes policies and procedures concerning drug abuse as it impacts on the performance of defense contracts. Departments may establish special procedures as they determine necessary to satisfy their mission requirements.

23.7501 Policy.

It is the policy of the Department of Defense that defense contractors shall maintain a program for achieving a drug-free work force.

223.7502 Definitions.

Illegal drugs, as used in this subpart, means controlled substances included in Schedule I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

Employee in a sensitive position, as used in this subpart, means an employee who has been granted access to classified information; or employees in other positions that the contractor determines involve National Security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

223.7503 General.

(a) The use of illegal drugs, on or off duty, is inconsistent with law-abiding behavior expected of all citizens. Employees who use illegal drugs, on or off duty, tend to be less productive, less reliable, and prone to greater absenteeism resulting in the potential for increased cost, delay, and risk to the government contract.

(b) The use of illegal drugs, on or off duty, by employees can impair the ability of those employees to perform tasks that are critical to proper contract performance and can also result in the potential for accidents on duty and for failures that can pose a serious threat to national security, health, and safety.

(c) The use of illegal drugs, on or off duty, by employees in certain positions can result in less than the complete reliability, stability, and good judgment that are consistent with access to sensitive information. Use of illegal drugs also creates the possibility of coercion, influence, and irresponsible action under pressure that may pose a serious risk to national security, and health and safety.

223.7504 Contract clause.

The contracting officer shall insert the clause at 252.223-7500 in all solicitations and contracts that meet the following criteria:

(a) All contracts involving access to classified information;

(b) Any other contract when the contracting officer determines that inclusion of the clause is necessary for reasons of national security or for the purpose of protecting the health or safety of those using or affected by the product of or the performance of the contract (except for commercial or commercial-type products (see FAR 11.001)).

(c) This clause does not apply to a contract, or to that part of a contract, that is to be performed outside of the United States, its territories, and possessions, except as otherwise determined by the contracting officer.

PART 224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 224.1—Protection of Individual Privacy

Sec.
224.102 General.
224.103 Procedures.

Subpart 224.2—Freedom of Information Act

224.202 Policy.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 224.1—Protection of Individual Privacy

224.102 General.

The Act does not apply to:

(a) Systems of records the contractor maintains on its employees.

(b) The records generated (admission forms, grade reports) by a state or private educational organization under a contract with the Government to provide training, when the records are similar to and commingled with those maintained on other students.

[55 FR 30158, July 24, 1990]

224.103 Procedures.

(b)(2) DoD rules and regulations are contained in DoD Directive 5400.11 Department of Defense Privacy Program.

[55 FR 30158, July 24, 1990]

Subpart 224.2—Freedom of Information Act

224.202 Policy.

(a) DoD implementation is in DoD Directive 5400.7, DoD Freedom of Information Act Program, and DoD Regulation 5400.7-R, DoD Freedom of Information Act Program.

[55 FR 30158, July 24, 1990]

PART 225—FOREIGN ACQUISITION

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225.000 Scope of Part.

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225.103 Agreements with certain foreign governments.
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225.108 Excepted articles, materials, and supplies.
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Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

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225.205 Solicitation provision and contract clause

Subpart 225.3—Balance of Payments Program

225.300 Scope of subpart.
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225.303 Procedures.
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225.600 Scope of subpart.
225.601 Definitions.
225.602 Policy.
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225.703 Exceptions.
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225.801 International agreements.
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Subpart 225.10—Sanctions for Violations of Export Controls

225.1003 Exceptions.
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Sec.

Subpart 225.70—Authorization and Appropriations Acts Restrictions

225.7000 Scope of subpart.
225.7001 Definitions.
225.7002 Restriction on food, clothing, fabrics, and speciality metals.
225.7003 Restriction on domestic hand or measuring tools.
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225.7005 Restriction on the hull and superstructure of naval vessels.
225.7006 Restriction on acquisition of foreign buses.
225.7007 Restriction on R&D contracting with foreign sources.
225.7008 [Reserved]
225.7009 Restriction on the acquisition of aircraft ejection seats.
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225.7012 Restriction on acquisition of machine tools and powered and non-powered valves.
225.7012-1 Applicability.
225.7012-2 Authorization Act restrictions (FY 1990—1991).
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225.7012-4 United States or Canadian origin.
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225.7102 Agreement with the Government of Canada.
225.7103 Guarantee by Canadian Government.
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225.7105 Contract administration.

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225.7200 Scope of subpart.
225.7201 Statutory requirements.
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225.7203 Exemptions from examination of records requirement.
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Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.
225.7301 Applicable statutory provisions.
225.7302 Applicability.
225.7303 Preparation of DoD offer and acceptance, DD Form 1513.
225.7304 Pricing acquisitions for foreign military sales.
225.7305 Sales commissions and contingent fees on foreign military Sales.
225.7306 [Reserved]
225.7307 Source selection.
225.7308 Limitation of Liability.
225.7309 Exercise of options for foreign military sales.
225.7310 Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.
225.7311 Use of Government production and research property on work for foreign governments or international organizations.
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SOURCE: 51 FR 46199, Dec. 23, 1986, unless otherwise noted.

225.000 Scope of Part.

This part supplements FAR part 25 and provides special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

Subpart 225.1—Buy American Act—Supplies

225.101 Definitions.

As used in this part, the words and terms defined in this paragraph shall have the meanings set forth below, unless a different definition is prescribed for a specific subpart.

Defense cooperation agreement country end product means an item listed in the defense cooperation country agreement and produced in that country.

A defense cooperation country is a foreign country which has a defense cooperation agreement and for which a Determination and Findings (D&F) was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 225.7501.

Defense cooperation country offer means an offer of a defense cooperation country end product, including transportation to destination.

Defense equipment means any equipment, item of supply, component, or end product purchased by the Department of Defense.

Domestic concern means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this part, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

Domestic end product means (i) an unmanufactured end product which has been mined or produced in the United States; or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (FAR 25.102(a)(3)).

FMS/Offset arrangement country offer means an offer of a FMS/Offset arrangement country end product, including transportation to destination.

FMS/Offset arrangement country is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case-by-case basis. These countries are listed at 225.7310(a).

FMS/Offset arrangement country end product means (i) an unmanufactured end product mined or produced in a FMS/Offset arrangement country; or (ii) an end product manufactured in a FMS/Offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

Foreign concern means a concern that is not a domestic concern.

Participating country is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S., and for which a blanket D&F was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 225.7401.

Participating country end product means (i) an unmanufactured end product mined or produced in a participating country; or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50% of the cost of all its components. The cost of components shall include transportation to the place of incorporation into the end product and any duty, whether or not duty is in fact paid.

Participating country offer means an offer of a participating country end product, including transportation to destination.

Qualifying country means any country defined as a defense cooperation country, a FMS/Offset arrangement country, or a participating country.

Qualifying country component means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

Qualifying country end product means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable D&F has been made waiving the Buy American Act restrictions; or (iii) a defense cooperation country agreement listed item.

Qualifying country offer means an offer of a qualifying country end product, including transportation to destination.

Source (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

United States means the States, the District of Columbia, Puerto Rico, and possessions. It does not include leased bases or trust territories.

[51 FR 46199, Dec. 23, 1986. Redesignated and amended at 54 FR 16117, Apr. 21, 1989]

225.102 Policy.

(S-70) *Buy American Act requirements.* Except as provided in this section, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 225.105.

(1) *Use outside the United States.* The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisition of supplies and applicable services for use outside the United States.

(2) *Unreasonable cost or inconsistency with the public interest.* The restrictions of the Buy American Act and the Balance of Payments Program do not apply when it is determined by the Secretary concerned that the cost of a domestic end product would be unreasonable, or that acquisition of a domestic end product would be inconsistent with the public interest. However when evaluating the acceptability of an end product of a country having a Foreign Military Sales (FMS)/offset arrangement with the United States (DFARS 225.7310), or an end product of a country having a Defense Cooperation Agreement with the United States (DFARS 225.7500), the determination that the acquisition of a domestic end product would be inconsistent with the public interest is delegated at the levels set forth under 225.102(S-71).

(3) *Nonavailability in the United States.* The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be

exempt under these exceptions are set forth in FAR 25.108(d)(1).

(4) *Commissary resale.* The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in this subpart.

(S-71) A nonavailability determination is not required for end products or components listed in (S-72) below or in FAR 25.108(d)(1). Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

(1) At a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(2) By the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(3) By the head of the contracting activity (HCA) or his immediate deputy, or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(4) By the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(S-72) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this subsection.

(1) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier.

(2) Foreign drugs by the Defense Personnel Support Center when the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements.

(S-73) *Balance of payments program requirements.* The 50% evaluation factor in favor of domestic offers, implemented in 225.105, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50% factor beyond the time when the U.S. balance of payments deficit is corrected.

(1) Although the evaluation procedures in 225.105 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one precisely obtained in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see FAR Subpart 1.4) from the evaluation procedures of 225.105 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Assistant Secretary of Defense (Acquisition and Logistics)(ASD(A&L)) or his designee.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38175, Sept. 29, 1988]

225.103 Agreements with certain foreign governments.

(See Subparts 225.73, 225.74, and 225.75.)

225.105 Evaluating offers.

In lieu of the procedures set forth in FAR 25.105, the following procedures are applicable to the Department of Defense.

(S-70) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (S-71) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest.

(S-71) Except as provided in this subparagraph (S-71) and in (S-73) and (S-74) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50% of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6% of that offer, whichever results in the greater evaluated price, except that a 12% factor shall be used instead of the 6% factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both; (ii) small purchase procedures are not used; and (iii) any contract award to a domestic concern which would result from applying the 12% factor, but which would not result from applying the 6% or 50% factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12% factor is applied, but would not be made if the 6% factor or 50% factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tiebreaking procedures in 214.407-6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subject to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example G below).

(S-72) The following examples illustrate how the procedure in (S-71) above should be applied. Throughout these examples, "domestic offer–large" means a domestic offer which is not from a small business or labor surplus area concern; "domestic offer–small" means a domestic offer which is from either a small business concern or a labor surplus area concern, or both.

Example A

Nonqualifying Country Offer, including duty of $4,500	$14,500
Domestic Offer—Large	15,100
Domestic Offer—Small	15,110

Award on Domestic Offer—Large. Domestic Offer—Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50% factor, would be $14,500 less $4,500 duty (i.e., $10,000), plus 50% of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6% factor, it would be $14,500 plus 6% of $14,500 (i.e., $870), or $15,370; therefore, the 6% factor is added, and the Domestic Offer—Large is the low evaluated offer.

Example B

Nonqualifying Country Offer, including duty of $2,000	$12,000
Domestic Offer—Large	15,000

Award on Domestic Offer—Large. Nonqualifying Country Offer, adjusted by 50% factor, is $15,000; adjusted by 6% factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000, resulting in a tie and consequent award on the Domestic Offer—Large.

EXAMPLE C

Nonqualifying Country Offer, including duty of $3,500	$13,500
Domestic Offer—Large	17,000
Domestic Offer—Small	15,100

Award on Domestic Offer—Small. Nonqualifying Country Offer, adjusted by 50% factor is $15,000; adjusted by 12% factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer—Small.

EXAMPLE D

Nonqualifying Country Offer, including duty of $70,000	$270,000
Domestic Offer—Large	310,000
Domestic Offer—Small	302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50% factor is $300,000; adjusted by 12% factor, it is $302,400; adjusted by 6% factor, it is $286,200. Therefore, Domestic Offer—Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

EXAMPLE E

Nonqualifying Country Offer, including duty of $2,000	$8,000
Domestic Offer—Large	10,500
Domestic Offer—Small	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8,960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE F

Nonqualifying Country Offer, including duty of $2,000	$8,000
Domestic Offer—Large	10,000
Domestic Offer—Small	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50% factor is $9,000; adjusted by 12% factor it is $8,960. Therefore, it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted, and the award is made on the nonqualifying country offer.

EXAMPLE G

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

(S-73) When a qualifying country offer is received for defense equipment listed in 225.7405 or FAR 8.203, rejection of that offer in the interest of protecting the domestic mobilization base is required, except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization base for those items. In those instances when it has been determined prior to solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. When rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 225.7405 or FAR 8.203, a copy of the proposed decision shall be forwarded to OASD(A&L)(P) (Foreign Contracting), 10 working days in advance of issuance of the rejection.

(S-74) When proposed awards are submitted for Secretarial decision pursuant to (S-71) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S-75) When performing the evaluation in (S-71) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50% evaluation factor of the Balance of Payments Program, but shall be subject to the 6% and 12%

evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of this subpart.

[51 FR 46199, Dec. 23, 1986, as amended at 54 FR 53617, Dec. 29, 1989]

225.107 Acquisition from or through other government agencies.

Balance of Payments evaluation procedures are not applicable to transactions described in FAR 25.107 (a), (b) and (c).

(S-70) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (1) a mandatory Federal Supply Schedule which includes a domestic end product; or (2) a nonmandatory Federal Supply Schedule.

(S-71) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50% evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(S-72) In the case of coordinated acquisition under part 8, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department, except when the Requiring Department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department.

225.108 Excepted articles, materials, and supplies.

(a) Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (For construction material, see FAR 25.2.)

(d)(1) Aluminum clad steel wire, sperm oil.

(d)(S-70) *Scrap.* Scrap generated in, collected in, and prepared for processing in the United States, shall be considered as of domestic origin.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38237, Sept. 29, 1988]

225.109 Solicitation provisions and contract clauses.

(a)(S-70) The provision at 252.225-7000, Buy American-Balance of Payments Program Certificate, shall be used in lieu of the provisions at FAR 52.225-1, Buy American Certificate, and FAR 52.225-6, Balance of Payments Program Certificate, and shall be inserted in any solicitation which includes the clause at 252.225-7001, unless the solicitation is solely for machine tools (see 225.7008(d)).

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable, other than those items which have been excepted either on a blanket or an individual basis, or the price of the offered foreign end product meets the evaluation criteria in 225.105.

(d)(S-70) The clause at 252.225-7001, Buy American Act and Balance of Payments Program, shall be used in lieu of the clauses at FAR 52.225-3, Buy American Act-Supplies, and FAR 52.225-7, Balance of Payments Program, unless the solicitation is solely for machine tools (see 225.7008(d)). The contracting officer shall insert the clause at 252.225-7001 in all solicitations and contracts (i) not utilizing small purchase procedures, (ii) which do not contain the clause at 252.225-7006, and (iii) for supplies and for services, which services require the furnishing of supplies (e.g., the leasing of equipment), except as cited in 225.302(S-72)(1).

(d)(S-71) [Reserved]

(d)(S-72) The contracting officer shall insert the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, whenever the clause at 252.225-7001 or the clause 252.225-7006 is used in the solicitation or contract.

(S-70) *Solicitation of offers.* Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 225.108(d)(1)) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38195, 38246, Sept. 29, 1988]

Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

(a)(1) and (2) The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the use of a particular domestic construction material would (i) unreasonably increase the cost, or (ii) be impracticable. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(a)(3) The Buy American Act does not apply to articles, materials, and supplies of a class or kind determined to be not mined, produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Certain construction materials determined to be exempt under this exception are set forth in FAR 25.108(d)(1). Purchase of nondomestic construction material on the basis of "nonavailability," when the material is not listed in FAR 25.108(d)(1), shall be made only if the determination for the purchase and use of such material is approved by:

(i) The Secretary of the Department concerned, if the cost of such materials is estimated to exceed $100,000;

(ii) The Head of the Contracting Activity or his immediate deputy, if the cost of such materials is estimated not to exceed $100,000;

(iii) The principal staff officer responsible for procurement within the contracting activity (or, in the Air Force, within the major air command) concerned, if the cost of such materials is estimated not to exceed $10,000; or

(iv) An official at a level above the contracting officer, if the cost of such materials is estimated not to exceed $2,500. Before granting such approval or making such determination, the feasibility of foregoing the requirement or providing a United States substitute shall be considered. When proposed awards are submitted for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials. Submissions shall allow 21 days for processing, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(S-70) *Panamanian materials for use in the Canal Zone.* In accordance with the Memorandum of Understanding ancillary to the Treaty with the Republic of Panama, signed 25 January 1955, articles, materials, and supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone are excepted from the Buy American Act.

225.205 Solicitation provision and contract clause.

(S-70) *Nondomestic construction material.* When a determination has been made that certain construction materials may be used without regard to The Buy American Act, the clause at 252.225-7003, Nondomestic Construction Materials, shall be included in the contract by the contracting officer, and the excepted item shall be listed therein. When this clause is used, the contracting officer shall place in the contract file a copy of the signed approval, and a copy thereof shall be available for public inspection.

Subpart 225.3—Balance of Payments Program

225.300 Scope of subpart.

This subpart implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (a) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except petroleum and Military Assistance Program acquisitions (see 225.72); and (b) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program acquisitions does not apply to 225.370. Defense requirements as to the use of U.S. Flag vessels, which effect the Balance of Payments Program, are set forth in FAR 47.5.

225.302 Policy.

(a) It is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act.

(S-70) *Prohibition against fragmenting acquisitions.* As to those provisions of this subpart which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

(S-71) *Real property construction, repair, and maintenance.* (1) Contracts for construction, repair, and maintenance of real property outside the United States will, to the extent required by DoD Directive, specify that U.S. materials will be used, or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including costs associated with transportation and handling) does not exceed the cost of acceptable foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in accordance with departmental procedures.

(2) The evaluation referred to in (1) above is normally accomplished in the estimating process prior to solicitation for award of a real property construction, repair or maintenance contract. This paragraph does not apply to direct contracts for acquisition of construction materials and equipment for use outside the United States. The procedures of 225.303 shall be used for such acquisitions (also see 225.302(S-73)).

(S-72) *Exceptions.*

(1) Acquisitions of end products (including construction materials) and applicable services for use outside the United States should be made in the following cases without regard to the origin of the end products. In these cases, the provision at 252.225-7000 and the clauses at 252.225-7001 and 252.225-7002 shall not be used.

(i) *Treaty or executive agreement*—acquisitions required to be made from indigenous sources pursuant to a treaty or executive agreement between governments.

(ii) *Small purchases*—acquisitions by contracting officers located outside the United States, when foreign cost is estimated not to exceed the small purchase limitation in FAR 13.000.

(iii) *Perishable subsistence*—acquisitions of perishable subsistence items when it is determined that delivery from the United States would destroy or significantly impair their quality at the point of consumption. The determination shall be made prior to acquisition by the individuals designated in (2)(i) below or their immediate deputies, except that this authority may be redelegated for acquisitions estimated not to exceed $500,000 in foreign cost. A determination is not required for the acquisition of perishable subsistence items for commissary resale.

(iv) *Panamanian products used in Panama*—acquisitions of articles, materials or supplies that are mined, produced, or manufactured in Panama when acquired by, and for use of, U.S. Forces in Panama.

(v) *Services*—Services which do not primarily involve the acquisition of equipment or supplies.

(vi) *Certain food items*—acquisition of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca, and coconut.

(vii) *Miscellaneous*—acquisition of the requirements listed below, *Provided*, they do not duplicate or replace an existing organic service capability.

(A) All items on the list at FAR 25.108(d)(1);

(B) Utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;

(C) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery and system; *Provided*, in the case of parts, That this exception applies only if the acquisition must be restricted to the original manufacturer or its supplier in accordance with DoD Standardization policy (see DoD 4120.3);

(D) Industrial gases;

(E) Brand drugs specified by the Defense Medical Materiel Board;

(F) The following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;

(G) Overhaul and repair of vessels, aircraft, and vehicles which are home-ported/stationed/deployed overseas and which, because of their operating commitments, cannot return to the United States or to U.S.-operated repair facilities;

(H) Ice (wet or dry);

(I) Books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which there are no substitutes of U.S. origin which are intended for use in the Department of Defense Overseas Dependents Schools; and

(J) Ready-mixed asphalt and portland cement concrete; *Provided*, That foreign cost is estimated not to exceed $100,000.

(viii) *Excess and near-excess foreign currencies*—acquisitions made with excess or near-excess foreign currencies when acquisition costs are in accordance with 225.7604.

(ix) *Commissary resale*—purchases of subsistence items of foreign origin which are intended for resale in overseas commissary stores.

(x) *Nonavailability in the United States*—acquisitions as to which it is determined in advance by the individuals designated in (2) below that (A) the requirements can only be filled by foreign end products because U.S. end products are not available per se, or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability, the health and safety of DoD personnel, or to protect property, and (B) that it is not feasible to forego filling the requirements or to provide a U.S. substitute for it. This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(xi) *Unreasonable cost*—acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost, if so determined in advance by the individuals designated in (2) below.

(2) The individuals listed below, and their immediate deputies are designated to make the determinations required by (1) (iii), (x), and (xi) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to other individuals specifically designated for this purpose for acquisitions estimated not to exceed $500,000:

DEPARTMENT OF THE ARMY—

Deputy Chief of Staff for Procurement and Production, U.S. Army Materiel Command;
Commander in Chief, U.S. Army, Europe; and DCSLOG, U.S. Army, Europe;
Commander, Eighth U.S. Army; and Chief of Staff, Eighth U.S. Army;
Commander, Corps of Engineers Command;
Commander, U.S. Army, Japan;

Commander, U.S. Army Medical Research and Development Command;
Commander, U.S. Army Forces Command;
Commander, U.S. Army, South.

DEPARTMENT OF THE NAVY—

Commander-in-Chief, U.S. Naval Forces, Europe;
Commander, U.S. Naval Forces, Japan;
Commander, U.S. Naval Forces, Philippines;
OASN (S&L), Director, International Programs;
Commander-in-Chief, U.S. Atlantic Fleet;
Commander, Naval Logistics Command, Pacific Fleet;
Commander, Military Sealift Command (MSC);
Commandant, U.S. Marine Corps;
Commander, Naval Facilities Engineering Command;
Commanding General, III Marine Amphibious Force.

DEPARTMENT OF THE AIR FORCE—

Commander, U.S. Air Forces in Europe;
Commander, Pacific Air Force;
Commander, Military Airlift Command (MAC);
Commander, Air Force Logistics Command;
Commander, Air Force Systems Command;
Commander, Strategic Air Command;
Commander, Tactical Air Command;
Commander, Air Force Communications Command;
Commander, Space Command.

DEFENSE LOGISTICS AGENCY—

Executive Director, Contracting.

DEFENSE COMMUNICATIONS AGENCY—

Director.

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Secretary of the Department concerned.

(3) Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada shall be made only in the following cases:

(i) Those set forth in (1) (i), (ii), and (viii) above;

(ii) When it is determined in advance, by the individuals designated in (4) below, that the requirement can only be filled by foreign end products or services and that it is not feasible to forego filling the requirement or to provide a U.S. substitute for it; and

(iii) Acquisitions other than those covered in (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50% of the foreign cost as determined by the individuals designated in (4) below. Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Assistant Secretary of Defense (Acquisition and Logistics).

(4) The individuals listed below and their immediate deputies are designated to make the determinations required by (3) (ii) and (iii) above.

(i) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to individuals specifically designated for this purpose for acquisitions estimated not to exceed $100,000:

DEPARTMENT OF THE ARMY—

Commander, U.S. Army Materiel Command
Commander, Corps of Engineers Command
Assistant Surgeon General for Research and Development;
Commander, U.S. Army Strategic Defense Command.

DEPARTMENT OF THE NAVY—

Chief of Naval Research;
Commander, Naval Air Systems Command;
Commander Naval Electronics Systems Command;
Commander, Naval Sea Systems Command
Chief, Bureau of Medicine and Surgery;
Commander, Naval Supply Systems Command;
Chief of Naval Development;
Oceanographer of the Navy;
Commander, Naval Facilities Engineering Command;
Military Sealift Command;
DC/S Installations and Logistics Department Headquarters, U.S. Marine Corps;

DEPARTMENT OF THE AIR FORCE—

Commander, Air Force Systems Command;
Commander, Air Force Logistics Command

DEFENSE AGENCIES—

Director, Advance Research Projects Agency;
Director, Defense Nuclear Agency;
Director, Defense Communications Agency;
Director, Defense Intelligence Agency.

(ii) For acquisitions estimated to exceed $2 million in foreign cost—Sec retary of the Department concerned, or the Assistant Secretary of Defense (Acquisition and Logistics) in the case of agencies set forth in (4)(i).

(5) Complete documentation justifying acquisitions under (1) and (3) above shall be prepared except for acquisitions made pursuant to (1)(ii) and (1)(vi). Such documentation shall be prepared by requiring activities, furnished in requests for determination submitted to the individuals listed in (2) and (4) above, and included in the contract file.

(S-73) *Construction materials.* Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, or to avoid taxation, or to obtain other advantages, purchase may be by the United States. Contracting Officers shall consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, shall take advantage of tax exemptions available under existing agreements. See 229.402-70. In specifying materials, supplies, and equipment for construction in foreign countries, contracting officers shall make maximum use of foreign currencies available for the project, shall encourage the use of American materials, equipment, and supplies and shall obtain the maximum feasible competition from indigenous, other foreign and American suppliers.

[51 FR 46199, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987; 53 FR 38175, Sept. 29, 1988; 55 FR 19078, May 8, 1990; 55 FR 30158, July 24, 1990]

225.303 Procedures.

Except as provided in 225.302(a)(S-72), proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with the evaluation procedures in (b) below.

(a) *Solicitation of offers.* When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis or the price for the nonqualifying country end item meets the evaluation criteria in (b) below. When only domestic end products are acceptable, the solicitation shall so state.

(b) *Evaluation.* (1) In accordance with the Balance of Payments Program, when these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 225.105, offers shall be evaluated so as to give preference to domestic offers as follows:

(i) Each nonqualifying country offer of defense equipment (but see exception in (ii) below) shall be adjusted for purposes of evaluation by increasing such offer by 50%. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in FAR 14.407-6.

(ii) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

EXAMPLE A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on qualifying country offer. The nonqualifying country offer, adjusted by 50% factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on nonqualifying country offer. Nonqualifying country offer, adjusted by 50% factor is $9,000. It is still lower than the domestic offer. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offer had never been submitted and the award is made on the nonqualifying country offer.

EXAMPLE C

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on nonqualifying country offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis, and the award is made on the nonqualifying country offer.

225.304 Excess and near-excess foreign currencies.

(See Subpart 225.76.)

225.305 Solicitation provision and contract clauses.

(c) *Clauses.* The contracting officer shall insert the clause at 252.225-7004, Identification of Expenditures in the United States, under the conditions set forth at 225.370 (see 225.109 for use of clauses at 252.225-7000, 7001, and 7002).

225.370 Identification of expenditures in the United States.

DoD balance of payment reporting instructions require the reporting of the amount of acquisitions of U.S. end products and services accomplished under these regulations. The following provisions are designed to facilitate such reporting by cognizant accounting and disbursing officers. In implementing these provisions, it is essential that there be appropriate liaison between acquisition, accounting, and disbursing personnel at each activity involved.

(a) Except as provided in (b) below, the clause at 252.225-7004, Identification of Expenditures in the United States, shall be included in each contract in excess of $25,000 that—

(1) Requires the contractor to furnish U.S. end products, except that the clause in 252.225-7004 is not required if the contractor is a domestic concern and the Government will take title to the end products within the United States; or

(2) In the case of a contract for construction, repair or maintenance of real property, or for services, to be performed outside the United States, either—

(i) Requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or

(ii) Is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources).

(b) In lieu of the clause specified at (a) above, the following statement may be placed prominently on the face of each such contract, where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable:

U.S. Expenditures for:

U.S. end products—_____% of each invoice.

U.S. services—_____% of each invoice.

Transportation on U.S. carriers—_____% of each invoice.

(See DoD FAR Supplement 252.225-7004 for definitions.)

(c) Contracts and purchase orders of $25,000 or less, which otherwise meet the criteria in (a) above for including the clause at 252.225-7004, shall have the statement in (b) above placed prominently on their face.

Subpart 225.4—Purchases Under the Trade Agreements Act of 1979

225.401 Definitions.

"Eligible product" means a designated or Caribbean Basin country end product listed at 225.403(S-70).

225.402 Policy.

(b) There shall be no purchase of a foreign end product listed in 225.403(S-70) with a total value at or above that specified in the FAR which is not a designated or Caribbean Basin country end product except as provided below:

(1) National interest exceptions must be approved on a case-by-case basis. An exception request with supporting rationale shall be submitted in accordance with Departmental procedures to DASD(A&L)(P) or designee.

(2) End products from countries listed at 225.7310(a) and 225.7401, and from countries at 225.75 are limited to those items listed on appropriate annexes.

225.403 Exceptions.

(c) But see 219.7000.

(d) This exception includes purchases from foreign sources where prohibited by the Department of Defense Annual Appropriations Act (see 225.7002). The products listed at 225.403(S-70) generally do not come under this exception, but in the event a Department considers an individual acquisition of such a listed product to be a purchase "indispensable for national security or national defense purposes," and appropriate for exclusion from the provisions of this subpart, a request with supporting rationale shall be submitted in accordance with Departmental procedures for approval by DASD(A&L)(P) or designee.

(S-70) *List of eligible products.* The following list is arranged according to Federal Supply Classifications. If an item is not within an FSC listed below, FAR Subpart 25.4 does not apply. As noted in FAR 25.401, Caribbean Basin country end products are limited to those which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list below of eligible products has been annotated to indicate those products which are eligible for designated countries, but are not presently eligible for Caribbean Basin countries due to this limitation. (Note: Most of the excluded product categories for Caribbean Basin countries mentioned in FAR 25.401 are not mentioned below, such as textiles, apparel articles, flat goods, footwear, handbags, work gloves, leather wearing apparel, and tuna, because these products do not fall into any of the eligible product categories due to other restrictions on foreign purchases.)

FSC Category/Description

22 Railway equipment
23 Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24 Tractors
25 Vehicular equipment components
26 Tires and tubes
29 Engine accessories
30 Mechanical power transmission equipment
32 Woodworking machinery and equipment
34 Metalworking machinery (except 3408, 3410-3419, 3426, 3433, 3441-3443, 3446, 3448, 3449, 3460, 3461)
35 Service and trade equipment
36 Special industry machinery (except 3690)
37 Agricultural machinery and equipment
38 Construction, mining, excavating, and highway maintenance equipment
39 Materials handling equipment
40 Rope, cable, chain and fittings
41 Refrigeration and air conditioning equipment
42 Fire fighting, rescue and safety equipment
43 Pumps and compressors
44 Furnace, steam plant and drying equipment (except 4470)
45 Plumbing, heating and sanitation equipment
46 Water purification and sewage treatment equipment
47 Pipe, tubing, hose and fittings
48 Valves
49 Maintenance and repair shop equipment (except 4920-4927, 4931-4935, 4960)
52 Measuring tools
53 Hardware and abrasives
54 Prefabricated structures and scaffolding
55 Lumber, millwork, plywood and veneer
56 Construction and building materials
61 Electric wire, and power and distribution equipment
62 Lighting fixtures and lamps

63	Alarm and signal systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.401 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	General purpose ADPE, software, supplies and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, visible record equipment and ADP equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers and adhesives
81	Containers, packaging and packing supplies (except 8140)
8460	Luggage—See FAR 25.401 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
91	Fuels, lubricants, oils and waxes—See FAR 25.401 for exclusion for Caribbean Basin countries
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals and their primary products
99	Miscellaneous

[51 FR 46199, Dec. 23, 1986, as amended at 54 FR 31039, July 26, 1989]

225.404 Labor surplus area set-asides.

(See 252.220-7000 and 252.220-7001.)

225.405 Procedures.

(d) This requirement does not apply to offshore procurements or to Defense Fuel Supply Center post, camp, or station overseas requirements. (See 225.501.)

225.407 Solicitation provision and contract clause.

(a)(1) The provision, Buy American Trade Agreements-Balance of Payments Program Certificate, at 252.225-7005, shall be used in all solicitations in which the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause at 252.225-7006 is used. This provision is to be used in lieu of that at FAR 52.225-8 unless the solicition is solely for machine tools (see 225.7008(e)).

(a)(2) The clause at 252.225-7006, Buy American Act, Trade Agreements Act, and the Balance of Payments Program, shall be used in lieu of the clause at FAR 52.225-9 and shall be inserted along with the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in all solicitations and contracts subject to the Trade Agreements Act, unless the solicition is solely for machine tools (see 225.7008(e)). The clause at 252.225-7006 may also be used in lieu of the clause at 252.225-7001.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38246, Sept. 29, 1988]

Subpart 225.5—Payment in Local Foreign Currency

225.501 Policy.

(a) Offshore contracts with local firms will be priced and paid in local currency unless (i) there exists a Status of Forces Agreement providing for payment in U.S. currency; or (ii) the use of local currency is determined to be inequitable, and the use of U.S. currency is authorized at a level above the contracting officer. An example of a situation where pricing and paying in dollars may be appropriate or necessary would be a contract requiring significant purchases in the United States (see 225.76).

Subpart 225.6—Customs and Duties

225.600 Scope of subpart.

This subpart sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exceptions to this rule are available to the Department of Defense: "Emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30, Harmonized Tariff Schedule of the United States; and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This subpart prescribes the uses and limits of these two exceptions. This subpart does not deal with or affect the evaluation of offers of foreign supplies as set forth elsewhere in part 225. Although the procedures of this subpart may require or permit duty-free entry to be accorded foreign supplies in a given case, this in itself neither precludes nor requires the inclusion of duty in evaluating an offer of such supplies.

[51 FR 46199, Dec. 23, 1986, as amended at 55 FR 19078, May 8, 1990]

225.601 Definitions.

Emergency Purchase of War Material means any acquisition of foreign supplies if:

(1) The supplies comprise—

(i) Weapons, munitions, aircraft, vessels, or boats;

(ii) Agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or

(iii) Supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (i) or (ii) above; and

(2) The acquisition—

(i) Is made in time of war or during a national emergency;

(ii) Is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(iii) Is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or

(iv) Consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

225.602 Policy.

The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations so that they do not result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates whenever there is *reasonable assurance* that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that a full benefit of the certificates inures to the Government. As a rule, a contractor which has been awarded a fixed-price-type contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with FAR 52.225-10 or 252.225-7008 of this supplement without an appropriate reduction in contract price.

225.603 Procedures.

(a) *General.* (1) To assure that the policy of 225.602 is carried out for emergency purchases of war materials abroad, the clauses at FAR 52.225-10 and 252.225-7014 of this supplement shall be used in each negotiated contract in excess of $100,000. Notwithstanding this dollar limit, the clauses may be inserted in any other negotiated contract when the contracting officer determines that to do so would further the policy in 225.602 and would be consistent with the limitations in (4) below, and in any such case the dollar figure in paragraphs (b)(1) and (i)(2) of the clause in FAR 52.225-10 may be reduced appropriately.

(2) When the clause at FAR 52.225-10 or at 252.225-7008 is used, the contracting officer shall insert the clause at 252.225-7007.

(3) In order to provide for duty-free entry for foreign supplies as required by various Memoranda of Understanding between the Department of Defense and allied nations and as required to fully implement the Trade Agreements Act, a clause entitled Duty-Free Entry—Qualifying Country End Products and Supplies is used in most DoD contracts (see 225.605).

(4) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in 225.605. Consistent with 225.602, duty-free entry certificates may also be issued in connection with any other contract for an "emergency purchase of war material" (i.e. one not containing an appropriate clause) that falls within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract regardless of whether title passes at point of origin or at destination in the United States; *Provided*, the contract states that the final price is exclusive of duty;

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (iii) below should be followed; and

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; *Provided*, (A) the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the contract, the applicable subcontract, or by the contracting officer. In any case the procedures required by the clauses prescribed in 225.605 shall be followed to the extent practicable.

(5) When the clauses cited at 225.605 are used, the Contracting Officer shall list in the contract the name and address of the CAO administering the contract and its activity address number (appendix N of this supplement) in paragraph (d) of the clause at 252.225-7014 or paragraph (k) of the clause at 252.225-7008.

(b) *Formal entry and release*—(1) *CAO responsibilities*. Contracting Officer assigned to administer the contract must assure that prime contractors are aware of and understand the clause requirements which are summarized below. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in the shipment being treated as a shipment without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item No. 9808.00.30, Harmonized Tariff Schedule of the United States.

(i) Written notice from the contractor or any tier subcontractor to the CAO immediately upon award to a foreign supplier. The notice includes:

(A) Prime contract number plus delivery order number, if applicable;

(B) Total dollar value of the prime contract or delivery order;

(C) Expiration date of the prime contract or delivery order;

(D) Foreign supplier name;

(E) Number of the subcontract/purchase order for foreign supplies;

(F) Total dollar value of the subcontract for foreign supplies;

(G) Expiration date of the subcontract for foreign supplies;

(H) List of items purchased; and

(I) Contractor certification by the purchaser of foreign supplies that supplies to be entered duty-free are intended to be delivered to the Government or incorporated in the end item delivered under the contract.

(ii) Contractor and subcontractor responsibilities to instruct foreign supplier regarding shipping document information including the Activity Address Number as set forth by the clause and as listed in Appendix N.

(iii) Contractor duties to prepare and submit to the District Director of Customs all customs forms required to enter foreign purchased supplies in the United States, its possessions, or Puerto Rico for shipments other than to a military installation in the United States.

(iv) Understanding of the flow down provision of clauses.

(v) Procedure for adjustment to prime contract price with regard to duty not previously excluded (see 225.602).

(2) *Duty-free entry entitlements.* Upon receipt of the required notice of purchase of foreign supplies from the prime contractor or any tier subcontractor, the contracting officer administering the prime contract will verify the duty-free entitlement of goods to be entered under the contract. A review of the prime contract should ensure foreign supplies (quantity and price) identified in the notice are required for the performance of the contract.

(3) *Adjustment to prime contract price.* When notification is received from the contractor by the administrative contracting officer indicating that a foreign purchase is being placed that was not identified at the time of the prime contract award, a reduction to the prime contract price may be required in accordance with the Duty-Free Entry clause at FAR 52.224-10, the Duty-Free Entry—Qualifying Country End Products and Supplies clause at 252.225-7008 or pursuant to 225.603(a)(4) of this supplement. After determining the amount of duty that would be payable if duty-free entry certificates were not issued, an equitable adjustment to the prime contract price shall be made unless otherwise approved by the procuring contracting officer. Unless retained in accordance with 242.203, the authority to negotiate and issue such modifications reducing the contract price has been delegated to the ACO in accordance with 242.203(a)(S-74). After determining the price of foreign supplies exclusive of duty, the contracting officer administering the contract shall advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(4) *Data required by DCASR New York.* (i) Within 20 days of receipt of the notification of purchase of foreign supplies, ACOs will forward the following information to DCASR New York in the format shown below:

TO: Commander
DCASR New York
ATTN: Chief, Customs Division, International Logistics Office
201 Varick Street
New York, NY 10014

A contractor notification of the purchase of foreign supplies has been received in accordance with FAR 52.225-10 and 52.225-7014 of the DoD FAR Supplement or 252.225-7008 of the Supplement. Verification has been made that foreign supplies are required for the performance of the contract. If required, prime contract price has been or will be adjusted in accordance with 225.603(b)(3) of the DoD FAR Supplement.

In accordance with 225.603(b)(4) of the Supplement, the following information is provided:

Prime Contractor Name:
Prime Contract Number plus Delivery Order
Number, if applicable:
Total Dollar Value of the Prime Contract or
Delivery Order:
Expiration Date of the Prime Contract or
Delivery Order:
Foreign Supplier Name:
Number of the Subcontract/Purchase Order for
Foreign Supplies:
Total Dollar Value of the Subcontract for
Foreign Supplies:
Expiration Date of the Subcontract for
Foreign Supplies:
CAO Activity Address Number (Appendix N of the DoD FAR Supplement):

Signature: ______________________________

Title: ______________________________

(ii) If a contract modification results in a change to any data previously furnished to DCASR New York to verify duty-free entitlement, a revised notification of the changed data shall be forwarded to DCASR New York.

(5) *Customs forms and duty-free entry certificates*—(i) *Execution of duty-free entry certificates.* The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Chief, Customs Division, International Logistics Office, DCASR New York. Upon receipt of import documentation for incoming shipments from the contractor, his agent, or the U.S. Customs Service, the Chief, Customs Division, International Logistics Office, DCASR New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(ii) *Customs import documentation.* Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or his agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506 and U.S. Customs Form 3461, with the District Director of Customs.

(c) *Immediate entry and release.* Immediate release permits, executed on Customs Forms 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which is Necessary), entitle all shipments qualifying as "emergency purchase" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Forms 7501, 7501A, or 7506 and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Forms 7501, 7501A, or 7506 and appropriate duty-free entry certificates. Each Department designates the individuals responsible for issuance of Immediate Release Permits.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38237, Sept. 29, 1988; 54 FR 16117, Apr. 21, 1989; 55 FR 19078, May 8, 1990]

225.604 Exempted supplies.

(b) *Supplies for vessels or aircraft operated by the United States.* (1) Subject to the considerations set forth in FAR 25.605, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment." The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(2) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(Date) ————————————

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309

(Name)————————————

(Title) ————————————

(Organization)————————————

225.605 Contract clause.

(a) When the contract is required to contain the clause at FAR 52.225-10 or at 252.225-7008, the contracting officer shall include the clauses at 252.225-7014 and 252.225-7007 of this Supplement. Notwithstanding FAR 25.605, the clauses shall only be used within the limits contained at 225.603(a) of this supplement.

(S-70) *Duty-free entry—qualifying country end products and components.* The clause at 252.225-7008 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted when simplified small purchase procedures are used or in contracts for supplies exclusively for use outside the United States.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38238, Sept. 29, 1988]

Subpart 225.7—Restrictions on Certain Foreign Purchases

225.702 Restrictions.

(S-70) Purchase of petroleum products originating in Angola from companies engaged in production of petroleum products in Angola is prohibited. For purposes of this section "petroleum product" means natural or synthetic crude; blends of natural or synthetic crude; and products refined or derived from natural or synthetic crude or from such blends.

(S-71) See 209.170 for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism.

[53 FR 38180, Sept. 29, 1988, as amended at 53 FR 38195, Sept. 29, 1988]

225.703 Exceptions.

(b) For other than small purchases, an exception shall be approved by the Secretary of the Department concerned. Before granting an exception for other than small purchases, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs); however, such advice is not required for emergency purchases, or where supplies are not available from any other source and substitute supplies are not acceptable.

(S-70) *Waiver.* The Secretary of Defense or designee may waive the restriction contained in 225.702(S-70) if the Secretary or designee determines that such action is in the best interest of the Government. Designees for this waiver authority are as follows:

(1) For the Department of the Army—Assistant Secretary of the Army (Research, Development and Acquisition).

(2) For the Department of the Navy—Assistant Secretary of the Navy (S&L).

(3) For the Department of the Air Force—Director of Contracting and Manufacturing Policy, Office of the Assistant Secretary of the Air Force (Acquisition).

(4) For the Defense Agencies—Assistant Secretary of Defense (Production and Logistics).

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38180, Sept. 29, 1988]

225.704 Contract clause.

(S-70) The Contracting Officer shall insert the clause at 252.225-7022, Certification and Agreement by Contractors Currently Producing Petroleum Products in Angola, in solicitations and contracts involving the supply of petroleum products.

[53 FR 38180, Sept. 29, 1988]

Subpart 225.8—International Agreements and Coordination

225.800 Scope of subpart.

This subpart concerns the applicability of international agreements other than those in Subparts 225.73, 225.74, 225.75, and coordination with overseas commands and activities in purchasing from foreign sources.

225.801 International agreements.

Treaties and international agreements in effect between the United States and governments receiving military and economic aid under the Foreign Assistance Act of 1961, affect acquisition in foreign countries. Copies of international agreements are filed with the United States European Command covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East. Agreements with countries in the Pacific and Far East are filed with the United States Pacific Command (CINCPAC). Military Assistance Advisory Groups, Naval Missions, and Joint United States Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

225.870 Coordination with overseas commands and activities.

When it has been determined that an acquisition will be made from a foreign contractor, overseas contracting offices shall be utilized to the maximum practical extent. Contracting offices not within the command jurisdiction of a unified or specified command, anticipating placement of contracts with foreign contractors, shall maintain liaison with the appropriate component commander during preaward negotiations and postaward administration. When an acquisition may result in a requirement for logistic support of contractor employees or additional Government employees in an overseas location, in support of US or FMS requirements, the contracting officer shall obtain advance approval from the appropriate component commander of the types of logistic support needed and of the costs associated with it. The contract file shall include documentation reflecting specific advance approval for such commitment from the appropriate component commander.

Subpart 225.9—Additional Foreign Acquisition Clauses

25.901 Omission of Examination of Records Clause.

(c) *Conditions for omission.*

(ii) A determination of the Secretary under FAR 25.903(a)(2) does not require the concurrence of the Comptroller General or his designee. However, when a determination is the basis for exclusion of the Examination of Records by Comptroller General clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be submitted in triplicate by the Department of Defense component concerned, to the Director for Information Operations and Reports, Washington Headquarters Services, Washington, DC 20301 (see also 225.7203).

(d) *Determination and findings.* Request for determination and findings for exclusion ordinarily will be initiated by the contracting officer. The report shall consist of a letter submitted through normal acquisition channels, addressed to the Secretary, setting forth all the facts necessary to arrive at an appropriate determination and findings.

[51 FR 46199, Dec. 23, 1986. Redesignated at 54 FR 53617, Dec. 29, 1989]

Subpart 225.10—Sanctions for Violations of Export Controls

225.1003 Exceptions.

(a) The determination authority designee is the head of the contracting activity.

(b) The determination authority designee is the contracting officer.

[54 FR 53617, Dec. 29, 1989]

225.1004 Procedures.

(a) Use the format at 206.202(b)(S-70) (G)*3*(ii), 216.102(d), or 225.7310(c)(2)(i).

[54 FR 53617, Dec. 29, 1989]

Subpart 225.70—Authorization and Appropriations Acts Restrictions

225.7000 Scope of subpart.

This subpart implements restrictions applicable to the Department of Defense on the availability of appropriated funds for the acquisition of certain commodities. However, reference should be made to the specific Department of Defense Appropriations and Authorization Acts as a check on the current applicability of these restrictions and on the applicability of these restrictions when obligating prior Fiscal Year funds. Nothing in this subpart affects the applicability of the Buy American Act or the Balance of Payments Program.

[55 FR 30158, July 24, 1990]

225.7001 Definitions.

As used in this subpart, the following terms have the meaning set forth below.

Hand or Measuring Tools, means those tools listed in Federal Supply Classification 51 and 52 respectively.

Possessions, as used in the phrase "United States or its possessions," includes Puerto Rico.

Specialty metals means:

(a) Steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65%; silicon, 0.60%; or copper, 0.60%; or which contains more than 0.25% of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(b) Metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10%;

(c) Titanium and titanium alloys; or

(d) Zirconium and zirconium base alloys.

United States means the States and the District of Columbia.

[51 FR 46199, Dec. 23, 1986, as amended at 52 FR 12390, Apr. 16, 1987; 53 FR 38246, Sept. 29, 1988; 54 FR 7428, Feb. 21, 1989; 55 FR 30158, July 24, 1990]

225.7002 Restriction on food, clothing, fabrics, and speciality metals.

Except as provided in paragraph (a) of this section, contracting activities shall not acquire supplies consisting in whole or in part of any food, clothing, tents, tarpaulins, covers, cotton, and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions, but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

(a) *Exceptions.* The following exceptions apply:

(1) Acquisitions outside the United States in support of combat operations;

(2) Acquisitions by vessels in foreign waters;

(3) Emergency acquisitions or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;

(4) Acquisitions of those supplies listed in FAR 25.108(d)(1) as to which the list does not make this subpart expressly applicable;

(5) Small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $25,000);

(6) Acquisitions of end items incidentally incorporating cotton or wool, of which the estimated value is not more than 10% of the total price of the end item; *Provided*, That the estimated value does not exceed $25,000 or 3% of the total price of the end item, whichever is greater;

(7) Any articles of food, individual equipment, tents, tarpaulins, covers, or clothing, or any form of cotton or other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, canvas products, or wool, as to which the Secretary concerned or a designee has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(8) Supplies purchased specifically for commissary resale (see 225.102(70)(4));

(9) Purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot

be acquired as and when needed at U.S. market prices;

(10) Purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition; and

(11) Purchases of specialty metals or chemical warfare protective clothing when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements, or when such acquisition is in furtherance of an agreement with a qualifying country.

(b) *Preference for certain domestic commodities.* The contracting officer shall insert the clause at 252.225-7009, Preference for Certain Domestic Commodities, in all solicitations and contracts expected to have a value of $25,000 or more.

(c) *Preference for domestic wool.* (1) The Secretaries have determined that to the extent that application of the procedures in this subparagraph results in the acquisition of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices.

(2) Offers for supplies of which wool is a part will be solicited on the following alternative bases:

(i) Manufactured in the United States or its possessions from domestic wool;

(ii) Manufactured in the United States or its possessions from foreign wool; and

(iii) Manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(3) For each solicitation for supplies of which wool is a component part or end product, the contracting officer will insert the clause at 252.225-7010, Domestic Wool Preference. The evaluation factor will be computed in accordance with (6) below, and the amount of the factor will be inserted in place of the blank in (c) of the provision at 252.225-7010.

(4) If, on the date of opening of offers, the average market price of domestic wool of usable grades is no more than 10% above the average of the prices of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications (see (6) below), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable offers have been received for the advertised quantity offering 100% domestic wools, the contract will be awarded for domestically produced articles using 100% domestic wools, and the procedure set forth in (5) and (6) below will be disregarded.

(5) In the evaluation of offers under this subpart, an evaluation factor computed in accordance with (6) below will be added to that portion of the offered price that represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie offers result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(6) The evaluation factor to be used under paragraph (c)(5) of this section will be 10% of the average of the following prices of representative grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price* per pound grease basis converted to clean basis for each grade. Include all grades of Original Bag Texas and Territory wool, and Graded Territory wool and Graded Fleece wool falling within the applicable category as reported in the Department of Agriculture "Market News".)

REPRESENTATIVE GRADE

	Price, clean basis, per pound, dollars
Category 1.—Grades 60's and finer	
The average of the following grades:	
64's	[**]
62's	[**]
60's	[**]
Category 2.—Grades 58's and below	
The average of the following grades:	
58's	[**]
56's	[**]
54's	[**]

[*] Use the current incentive (support) price as established by the Secretary of Agriculture.

[**] The price clean basis for each grade is derived by dividing the current incentive price by the first of the two grease percentages for the applicable grades (for which prices are reported) listed in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or the closing date of requests for proposals. For solicitation purposes, the evaluation factor shall be computed on the basis of the four issues of the "Market News" immediately preceding the issuance of bids or proposals, and adjusted at the time of the opening/closing date of the solicitation if the incentive reflective prices change during the interim.

(7) See Subpart 225.76 for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

(d) *Preference for domestic specialty metals.* (1) The contracting officer shall insert the clause at 252.225-7011, Preference for Domestic Specialty Metals (Major Programs), in all solicitations and contracts over $25,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons, and ammunition.

(2) The contracting officer shall insert the clause at 252.225-7012, Preference For Domestic Specialty Metals, in all solicitations and contracts over $25,000, other than those covered by the clause in (d)(1) above, calling for the delivery of an article that contains specialty metals.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38175, 38247, Sept. 29, 1988; 55 FR 19079, May 8, 1990]

225.7003 Restriction on domestic hand or measuring tools.

Public Law 97-377 and subsequent laws appropriating funds for the Department of Defense have provided restrictions on the acquisition of hand or measuring tools. The contracting officer shall insert the clause at 252.225-7013, Preference for Domestic Hand or Measuring Tools, in all solicitations and contracts over $25,000 calling for delivery of hand or measuring tools.

[51 FR 46199, Dec. 23, 1986, as amended at 55 FR 19079, May 8, 1990]

225.7004 Restriction on sources for manual typewriters.

10 U.S.C., section 2507(c) provides that funds appropriated to or for the use of the Department of Defense may not be used for the procurement of manual typewriters which contain one or more components manufactured in a country which is a member of the Warsaw Pact unless the products of that country are accorded nondiscriminatory treatment (most favored nation treatment).

[53 FR 38201, Sept. 29, 1988, as amended at 55 FR 19079, May 8, 1990]

225.7005 Restriction on the hull and superstructure of naval vessels.

Each year the Department of Defense Appropriations Authorization Act contains the Burns-Tollefson Amendment which reads:

> *Provided,* That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: *Provided further,* That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards.

This Amendment is incorporated into the Department of Defense Appropriations Act each year and is located under "Shipbuilding and Conversion, Navy".

225.7006 Restriction on acquisition of foreign buses.

(a) 10 U.S.C. 2507(a) provides that funds appropriated for use by the armed forces shall not be available to acquire a multipassenger motor vehicle (bus) not manufactured in the United States, except as authorized by regulations promulgated by the Secretary of Defense to ensure that compliance with this subsection will not result in an uneconomical procurement action or adversely affect the national interest.

(b) The objective of this statutory provision is to assure that only buses manufactured in the United States shall be used to satisfy requirements of United States Armed Forces located throughout the world for bus transportation, where such buses are available and where their use would not be uneconomical or contrary to the national interests of the United States. It should be applied whether the buses are purchased, leased, rented, or made available under contracts for transportation services. The use of foreign manufactured buses is authorized where the Head of the Contracting Activity determines that the use of U.S.-manufactured buses would be uneconomical or would adversely affect the national interests of the United States. However, foreign buses may be acquired without such determination in the following circumstances:

(1) When U.S.-manufactured buses are not available in time to satisfy requirements which cannot be postponed, foreign-manufactured buses may be used for a temporary period of time but not to exceed the lead time required for acquisition and delivery of U.S.-manufactured buses.

(2) When the requirement for buses is of a temporary nature to meet a special but nonrecurring requirement or where a recurring requirement is sporadic and infrequent, foreign-manufactured buses may be used for the temporary periods of time not to exceed the period of time needed to meet the nonrecurring or the recurring infrequent requirement.

(3) When foreign-manufactured buses are made available at no direct or indirect acquisition cost to the U.S. Government, foreign-manufactured buses may be used.

[51 FR 46199, Dec. 23, 1986, as amended at 55 FR 19079, May 8, 1990]

225.7007 Restriction on R&D contracting with foreign sources.

(a) Section 744 of the Defense Appropriations Act for FY 1973 (Pub. L. 92-570) provides that no funds appropriated for the Department of Defense are available for entering into any contract or agreement with any foreign corporation, organization, person, or other entity for the performance of research and development in connection with any weapon system or other military equipment for the Department of Defense when there is a U.S. corporation, organization, person, or other entity equally competent to carry out such research and development and willing to do so at a lower cost.

(b) The above provision does not change the rules for the selection of research and development contractors set forth in FAR part 35. However, when a U.S. and a foreign source are considered equally competent, the contracting officer will make a determination as to which of the sources will provide the services required at the lowest estimated cost to the Government.

225.7008 [Reserved]

225.7009 Restriction on the acquisition of aircraft ejection seats.

Funds appropriated for the Department of Defense for Fiscal Years 1984 through 1989 may not be used to procure aircraft ejection seats manufactured in any foreign nation that does not permit United States manufacturers to compete for ejection seat procurement requirements in that foreign nation. This limitation shall apply only to ejection seats procured for installation on aircraft produced or assembled in the United States.

[53 FR 38203, Sept. 29, 1988, as amended at 55 FR 19079, May 8, 1990]

225.7010 Restriction on procurement of certain chemical weapons antidote.

10 U.S.C. 2507(b) provides that funds appropriated to the Department of Defense may not be used for the procurement of chemical weapons antidote contained in automatic injectors (or for the procurement of the components for such injectors) determined

to be critical under the Industrial Preparedness Planning Program of the Department of Defense unless the following conditions are met:

(a) Such injector or component is manufactured in the United States by a company which is an existing producer under the Industrial Preparedness Program at the time the contract is awarded and which has—

(1) Received all required regulatory approvals; and

(2) Has the plant, equipment, and personnel to perform the contract in existence in the United States at the time the contract is awarded; or

(b) The Secretary of Defense, acting through the Under Secretary of Defense for Acquisition, determines that such procurement from a source in addition to a source described in paragraph (a) is critical to the national security.

[53 FR 38203, Sept. 29, 1988, as amended at 55 FR 19079, May 8, 1990]

225.7011 [Reserved]

225.7012 Restriction on acquisition of machine tools and powered and non-powered valves.

Public Law 99-591 (DoD Appropriations Act for FY 1987) and subsequent statutes have imposed restrictions on the acquisition of certain classes of machine tools, and on powered and non-powered valves used in piping for naval surface ships and submarines. Appropriations Act restrictions apply to acquisitions made obligating certain year funds, while Authorization Act restrictions apply to fund obligations made during certain fiscal years regardless of the year in which the funds were appropriated. When both restrictions apply to an acquisition, the Appropriations Act restrictions take precedence and the procedures of 225.7012-3 apply.

[55 FR 30158, July 24, 1990]

225.7012-1 Applicability.

(a) "Machine tools" restricted under this section are those tools listed in Federal Supply Classes of metalworking machinery in the following categories

Federal Supply Classification (FSC) and Name

FSC 3405*—Saw and Filing Machines
FSC 3408—Machining Centers and Way Type Machines
FSC 3410—Electrical and Ultrasonic Erosion Machines
FSC 3411—Boring Machines
FSC 3412—Broaching Machines
FSC 3413—Drilling and Tapping Machines
FSC 3414—Gear Cutting and Finishing Machines
FSC 3415—Grinding Machines
FSC 3416—Lathes
FSC 3417—Milling Machines
FSC 3418—Planers and Shapers
FSC 3419—Miscellaneous Machine Tools
FSC 3426—Metal Finishing Equipment
FSC 3433—Gas Welding, Heat Cutting, and Metalizing Equipment
FSC 3438*—Miscellaneous Welding Equipment
FSC 3441—Bending and Forming Machines
FSC 3442—Hydraulic and Pneumatic Presses, power driven
FSC 3443—Mechanical Presses, power driven
FSC 3445*—Punching and Shearing Machines
FSC 3446—Forging Machinery, and Hammers
FSC 3448—Riveting Machines
FSC 3449—Miscellaneous Secondary Metal Forming and Cutting Machines
FSC 3460—Machine and Tool Accessories
FSC 3461—Accessories for Secondary Metalworking Machinery

* Not subject to the restrictions of 225.7012-3 for FY 87 or FY 88 funds.

(b) "Valves" restricted under this section are those powered and non-powered valves listed in Federal Supply Classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

[55 FR 30158, July 24, 1990]

225.7012-2 Authorization Act restrictions (FY 1990-1991).

(a) Unless an exception applies under 10 U.S.C. 2507(d), funds appropriated or otherwise made available in DoD may not be used to enter into a contract for the procurement of machine tools or powered and non-powered valves identified in 225.7012-1 unless the tools or valves are of United States or Canadian origin.

(b) Exceptions. (1) The restriction in paragraph (a) of this subsection is waived for procurements of less than $25,000 when simplified small purchase procedures are used.

(2) The Head of the Agency may waive the restriction in paragraph (a) of this subsection for other procurements on a case-by-case basis if any of the following apply:

(i) The restriction would cause unreasonable costs or delays to be incurred

(ii) United States producers of the item would not be jeopardized by competition from a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iv) The restriction would impede cooperative programs entered into between the Department of Defense and a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(v) The restriction would result in the existence of only one United States or Canadian source for the item.

[55 FR 30158, July 24, 1990]

225.7012-3 Appropriations Act restrictions (FY 1987-1989).

(a) Machine tools listed in 225-7012-1, except for those asterisked, purchased directly as an end item or indirectly on behalf of the Government using funds appropriated for FY 1989 must be of United States or Canadian origin. This restriction also applies to purchases made using FY 1987 and 1988 appropriated funds except for those machine tools asterisked in 225.7012-1.

(b) The restrictions under this subsection may be waived only if there is not an adequate supply of these machine tools of United States or Canadian origin to meet DoD requirements on a timely basis. The Head of the Agency may waive the restriction for procurements of $25,000 or more and the Chief of the Contracting Office may waive for procurements less than $25,000.

[55 FR 30159, July 24, 1990]

225.7012-4 United States or Canadian origin.

A valve or machine tool shall be considered to be of United States or Canadian origin if (a) it is manufactured in the United States or Canada and (b) the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

[55 FR 30159, July 24, 1990]

225.7012-5 Provisions and clauses.

(a) Unless a waiver has been granted, the contracting officer shall insert—

(1) The clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools, in all solicitations and contracts for machine tools which are restricted under 225.7012-2 when the contract will be awarded from October 1, 1989 through September 30, 1991.

(2) The clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools, with its Alternate I, for machine tools restricted under 225.7012-3.

(3) The clause at 252.225-7023, Restriction on Acquisition of Foreign Machine Tools, with its Alternate I, for acquisitions covered by both 225.7012-2 and 225.7012-3.

(b) Unless a waiver has been granted, the contracting officer shall insert the clause at 252.225-7024, Restriction on Acquisition of Foreign Valves, in all solicitations and contracts for valves when the contract will be awarded from October 1, 1989 through September 30, 1991.

(c) When the acquisition is solely for valves or machine tools, the contracting officer shall not include the clauses at 252.225-7000, 252.225-7001, 252.225-7005, or 252.225-7006.

[55 FR 30159, July 24, 1990]

225.7013 Prohibition of certain contracts with foreign entities for the conduct of strategic defense initiative RDTE.

(a) *Definitions.* As used in this section:

Competent means the ability of an offeror to satisfy the requirements of the solicitation. This determination is based on a comprehensive assessment of each offeror's proposal including a consideration of the specific areas of evaluation criteria in the relative order of importance described in the solicitation.

Foreign firm means a business entity owned or controlled by one or more foreign nationals or a business entity in which more than 50 percent of the stock is owned or controlled by one or more foreign nationals.

United States firm means a business entity other than a foreign firm.

(b) *Prohibition.* Section 222 of the Defense Authorization Act for FYs 1988 and 1989 (Pub. L. 100-180) prohibits the award of certain contracts, for the conduct of Strategic Defense Initiative (SDI) Program research, development, test, or evaluation (RDTE), to foreign governments or firms unless the Secretary of Defense certifies to Congress in writing at any time during the applicable fiscal year that work cannot be competently performed by a U.S. firm at a price equal to or less than the price of the foreign government or firm. For purposes of implementing this section, HCAs are authorized to make this certification (see paragraph (c)(2) below). Accordingly, except as provided for in paragraph (c) below, any funds appropriated to, or for the use of, the DoD, may not be used to enter into or carry out any contract, including any contract awarded as a result of a Broad Agency Announcement (BAA), with a foreign government or firm if the contract provides for the conduct of RDTE in connection with the SDI. This prohibition, however, is not intended to deny access to foreign expertise when contract performance requires a level of competency unavailable in the United States.

(c) *Exceptions.* The prohibition shall not apply:

(1) To contracts awarded to a foreign government or firm if the contracting officer determines that—

(i) The contract is to be performed within the United States; or

(ii) The contract is exclusively for RDTE in connection with antitactical ballistic missile systems; or

(iii) The foreign government or foreign firm agrees to share a substantial portion of the total contract cost. The foreign share may be considered substantial where it is equitable with respect to the relative benefits to be derived from the contract by the U.S. and the foreign parties. For example, if the contract is more beneficial to the foreign party, its share of the costs should be correspondingly higher; or

(2) If the HCA has certified in writing, prior to contract award, that a contract for research, development, testing, or evaluation (other than for RDTE described in paragraph (c)(1)(ii) above) cannot be competently performed by a United States firm at a price equal to or less than the price at which the RDTE would be performed by a foreign government or firm.

(d) *Procedures.* (1) When awarding a prime contract to a foreign government or firm under paragraph (c)(2) above, the contracting officer or Source Selection Authority, as applicable, shall make a determination which will be the basis for the certification in paragraph (c)(2) above.

(i) The determination must describe the contract effort; state the number of proposals solicited and received from both U.S. and foreign firms; identify the proposed awardee and the amount of the contract; state that selection of the contractor was based on the evaluation factors contained in the solicitation, or the criteria contained in the BAA; and state that the effort cannot be competently performed by a U.S. firm at a price equal to, or less than, the price at which it would be performed by the foreign awardee.

(ii) When a BAA or Program Research and Development Announcement (PRDA) is used, or when the determination is otherwise not based on direct competition between foreign and domestic proposals, the determination must not be merely conclusory. The determination must contain a specific explanation of the basis for the determination including a description of the method used to determine the competence of U.S. firms and a description of the cost or price analysis that has been performed to support the determination. Alternately, the determination may contain a finding, including the basis for such finding, that the proposal was submitted solely in response to the terms of a BAA or PRDA, or other solicitation document without any technical guidance from the program office; and a finding, including the basis for such finding, that disclosure of the information in the proposal for the purpose of conducting a competitive procurement would be prohibited.

(2) If award is based on a determination under paragraph (d)(1) above, or award is based on other than full and open competition in accordance with FAR subpart 6.3, or award is made as the result of an unsolicited proposal in accordance with FAR subpart 15.5, then a copy of the certification (from paragraph (c)(2) above), and, as appropriate, the determination or justification and approval (J&A) shall be forwarded within 30 days of contract award to the SDI Organization, Attention: SDIO/MN, The Pentagon, Washington, DC 20301-7100.

(e) *Solicitation Provision.* Unless foreign participation is otherwise excluded, the contracting officer shall insert, in all competitively negotiated SDI solicitations for RDTE, a provision substantially the same as the provision at 252.225-7028, "Notice of Prohibition of Certain Contracts With Foreign Entities for the Conduct of Strategic Defense Initiative RDTE".

[54 FR 16117, Apr. 21, 1989, as amended at 54 FR 53617, Dec. 29, 1989]

Subpart 225.71—Canadian Purchases

225.7101 Mutual Canadian-American interests.

(a) Because of the close geographical proximity of the United States and Canada, and because of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(1) Greater integration of military production;

(2) Greater standardization of military equipment;

(3) Wider dispersal of production facilities;

(4) Establishment of supplemental sources of supply; and

(5) Greater flow of defense supplies and equipment between the two countries.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes requires (i) the exemption of the restrictions of the Balance of Payment Program and the Buy American Act with respect to acquisitions for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in subparts 225.1 and 225.3; and (ii) the Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, to insert suitable provisions in such contracts, obtaining for the Department of Defense the same production rights, data and information that the Department of Defense would obtain for itself pursuant to the FAR and this supplement if the Department were placing the contracts with U.S. concerns.

225.7102 Agreement with the Government of Canada.

(a) The agreement, dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961, and 15 October 1962, between the Department of Defence Production (Canada) and the Department of Defense (see appendix T subpart 2), sets forth policies and provides for the implementation of procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation (an agency of the Government of Canada) on or after 1 October 1956.

(b) Subsequent to the execution of the agreement referred to in (a) above, the reorganization of the Canadian Government's departments and agencies vested the contracting authority of the former Canadian Department of Defence Production in the Department of Supply and Services. Pursuant to that reorganization, the authority of the Department of Defence Production to enter into cooperative development projects under the Memorandum of Understanding (see appendix T) is vested in the Canadian Department of Industry, Trade and Commerce.

(c) This agreement and associated enabling provisions permit Canadian firms, including Canadian Crown corporations, a fair opportunity to participate in the production of defense equipment and materiel involving defense programs of interest to both nations.

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 225.7104(b).)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

225.7103 Guarantee by Canadian Government.

The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

225.7104 Procedures for Canadian Purchases.

(a) *Bidding Procedures*—(1) *Solicitation of Canadian firms.* (i) Except as provided in (ii) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.

(ii) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see FAR 14.205-1).

(iii) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-OS6, Canada.

(iv) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(v) Small purchases (see FAR Part 13) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation.

(2) *Submission of offers.* (i) As indicated in 225.7104(b) below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100% with the offeror.

(ii) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly. The Canadian Commercial Corporation endorsement must be received by the contracting officer prior to contract award.

(iii) All sealed bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such sealed bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(iv) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising therefrom shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(b) *Contracting procedures.* (1) Individual contracts covering purchases from suppliers located in Canada, except as noted in (2) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Avenue, Hull, Quebec, Canada (mail address—Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-OS6 Canada), and at 2450 Massachusetts Avenue, NW., Washington, DC 20008. Contracts should normally be awarded to and administered through the Export Supply Centre Office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract; *Provided*, however, that the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(2) The general policy in (1) above need not be followed for negotiated purchases for experimental, developmental, or research work unless the contract is for a project under the Defense Development Sharing Program; purchases of unusual or compelling urgency; small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(3) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian. When contracts provide for payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(c) *Administration procedures.* (1) The following policy and procedures are applicable only to cost-reimbursement type contracts with Canadian contractors:

(i) On contracts with the Canadian Commercial Corporation (CCC), audits are automatically arranged by the Department of Supplies and Services (DSS) Canada (see 225.7102). Audit reports are furnished to DSS. Upon advice from DSS, the CCC will certify the invoice and forward it with Standard Form 1034 (Public Voucher) to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer.

(ii) On contracts placed directly with Canadian firms, audits are requested by the ACO from the Audit Services Bureau (ASB), Ottawa, Ontario, Canada. Invoices are approved by the ASB/DSS auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by Standard Form 1034 (Public Voucher) are forwarded to the ACO for further processing (see 242.803(a)) and transmittal to the disbursing officer. Periodic advisory audit reports are furnished directly to the ACO.

(d) *Termination procedures.* The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the U.S. contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Defence Production (Canada) contracts. The U.S. agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Commercial Corporation with respect to settlement of any subcontracts placed in the United States, including disposal of inventory. The settlement of such U.S. subcontracts shall be in accordance with this regulation.

(e) *Acceptance of Canadian supplies.* Under f.o.b.-origin contracts with the Canadian Commercial Corporation where inspection has been performed by the Department of National Defence (Canada), pursuant to paragraph 6 of the Letter of Agreement (see appendix T), acceptance of supplies or services which are in accordance with the terms of the contract, shall be made by the Department of National Defence (Canada) on behalf of the Defense Departments and Agencies. Signing of the acceptance certificate on the applicable United States Department of Defense inspection and acceptance form shall be considered satisfactory evidence for payment purposes.

(f) *Industrial security.* Industrial Security for Canada shall be in accordance with 225.7403(d) and pursuant to the United States-Canada Industrial Security Agreement of 31 March 1952, as amended.

[51 FR 46199, Dec. 23, 1986, as amended at 54 FR 26207, June 22, 1989]

225.7105 Contract administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:

Defense Logistics Agency, Defense Contract Administration Services, Management Area, Ottawa, 365 Laurier Avenue West, Ottawa, Ontario, Canada, K1A OS5

(b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DoD funds (DoD Department Code: 17—Navy; 21—Army; 57—Air Force; 97—All other DoD Components), whether payment is in Canadian or U.S. dollars, shall be:

Disbursing Office, Defense Contract Administration, Services Region, Cleveland, 1240 East 9th Street, Anthony J. Celebrezze Federal Building, Cleveland, Ohio 44199

Subpart 225.72—Military Assistance Program Acquisitions

225.7200 Scope of subpart.

This subpart implements the Military Assistance Program portion of the Foreign Assistance Act of 1961 (section 604, 22 U.S.C. 2354) and the policies set forth in the President's Determination under section 604(a) of the said act (Memorandum of October 18, 1961) and in Executive Order 10973 dated 3 November 1961.

225.7201 Statutory requirements.

(a) Section 604(a) of the Foreign Assistance Act of 1961, as implemented, provides that funds made available under the Act shall not be used for acquisition outside the United States except:

(1) To acquire items required for military assistance which are not produced in the United States;

(2) To make local purchases for administrative purposes;

(3) To use local currency available for military assistance purposes; or

(4) Where the Assistant Secretary of Defense (ISA) certifies that exclusion of acquisition outside the United States would seriously impede attainment of Military Assistance Program objectives.

(b) Where a MAP order involves acquisition covered by a certification issued in accordance with (a)(4) above, the Director of Military Assistance, Office of the Assistant Secretary of Defense (International Security Affairs), will specify in the order that the Military Department is authorized to contract offshore.

225.7202 Procedures.

The following procedures apply to all contracts for the Military Assistance Program (other than those excepted pursuant to 225.7201) citing funds authorized by the Foreign Assistance Act of 1961, or citing funds made available under Department of Defense Appropriation Acts when it is known at the time of acquisition that the items being acquired are to fill existing Military Assistance Program orders and that DoD appropriations are to be reimbursed from Foreign Assistance Act funds. The requirements of this paragraph do not apply to issues from DoD inventories or to replenishment of such inventories.

(a) *Method of purchase.* Acquisition for the Military Assistance Program shall be restricted to domestic concerns and to U.S. end products as defined in 252.225-7016. The Foreign Assistance Act of 1961 shall not be used as authority to contract without full-and-open competition under 10 U.S.C. 2304(c)(5).

(b) *Certificate.* When the acquisition is solely to fill existing Military Assistance Program orders, the solicitation shall so state. When the acquisition consists of both Military Assistance Program items and Non-Military Assistance Program items, the solicitation shall clearly designate the Military Assistance Program items. In either instance, the solicitation shall require that each offer for end products include either the certificate at 252.225-7000 or the certificate at 252.225-7005 and the certificate at 252.225-7015.

225.7203 Exemptions from examination of records requirement.

(a) *General.* Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968, as amended, and the Arms Export Control Act of 1976, as amended, are exempt (Executive Order No. 11223, dated 12 May 1965) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and section 3(b), Pub. L. 85-804) in the following circumstances:

(1) Contracts with foreign contractors (including foreign governments) to be performed outside the United States; and

(2) Contracts, and amendments and modifications thereof, entered into pursuant to Pub. L. 85-804 (see FAR part 50), *Provided,* That the Department concerned shall make a determination that it is impracticable to include the Examination of Records clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to FAR Part 50.

(b) Notwithstanding the exemptions permitted above, the contracting officer, where practicable, shall include the Examination of Records clause in contracts covered in (a)(1) above.

225.7204 Department of Defense audit and records.

Contracts exempted under 225.7203(a)(1) from the requirement for examination of records by the Comptroller General shall nevertheless include the clause at FAR 52.214-26, Audit—Sealed Bidding or at FAR 52.215-2, Audit—Negotiation, as appropriate, in accordance with the requirements of that paragraph.

225.7205 Contract provision and clause.

(a) The provision at 252.225-7015, United States Products Certificate (Military Assistance Program), shall be inserted in all solicitations which, in whole or in part, are subject to this subpart 225.72 under the conditions at 225.7202(b).

(b) The clause at 252.225-7016, United States Products (Military Assistance Program), shall be inserted by the contracting officer in all solicitations and contracts which call for end products which, in whole or in part, are subject to this subpart 225.72, unless excepted pursuant to 225.7201 and in all solicitations which include the provision at 252.225-7015.

Subpart 225.73—Acquisitions for Foreign Military Sales

225.7300 Scope of subpart.

This subpart sets forth policies and procedures applicable to acquisitions made for the purpose of Foreign Military Sales (FMS) pursuant to the Arms Export Control Act. It does not apply to Foreign Military Sales made from inventories or stocks, to acquisitions for replenishment of inventories or stocks, or acquisitions made under DoD Cooperative Logistic Supply Support Arrangements. An FMS Agreement is an accepted Letter of Offer and Acceptance which is the document by which the U.S. Government agrees to sell defense articles and services to a foreign government or international organization.

225.7301 Applicable statutory provisions.

(a) *Contract authorization.* (1) Pursuant to section 22 of the Arms Export Control Act (Pub. L. 90-629, as amended), the Department of Defense is authorized to enter into contracts for purposes of resale to foreign countries or international organizations.

(2) The Act provides in part that:

(i) The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the acquisition of defense articles or defense services for sale for U.S. dollars to any foreign country or international organization if such country or international organization provides the U.S. Government with a dependable undertaking (A) to pay the full amount of such contract which will assure the U.S. Government against any loss on the contract; and (B) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(ii) The President may, if he determines it to be in the national interest, issue letters of offer under section 22 of the Arms Export Control Act, as amended, which provides for billing upon delivery of the defense article or rendering of the defense service and for payment within 120 days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.

(b) *Contractor preference for direct commercial sales.* Dod policies and procedures with respect to contractor preference for direct commercial sales are contained in the Security Assistance Management Manual (DoD 5105.38-M), Chapter 6, Section II, entitled Contractor Preference for Direct

Commercial Sales, published by the Defense Security Assistance Agency.

[51 FR 46199, Dec. 23, 1986, as amended at 52 FR 34788, Sept. 15, 1987]

225.7302 Applicability.

The FAR and this supplement shall apply to all purchases and contracts made by the Department of Defense in support of Foreign Military Sales.

225.7303 Preparation of DoD offer and acceptance, DD Form 1513.

(a) DD Form 1513 lists the items and/or services, estimated costs, the terms and conditions of sale, and provides for the foreign government's signature to indicate acceptance.

(b) *Procedures.* (1) In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 which cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable), before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery and other relevant information shall be requested from the prospective source, and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

(2) As a general rule on FMS programs requiring new acquisitions, the contracting officer should participate in the preparation of Price and Availability Data to support the tendering of the DoD Offer and Acceptance (DD Form 1513) by the U.S. Government to foreign countries and international organizations. In addition to the identification and review of sales commissions and fees, the contracting officer shall request contractors to identify in advance of the DoD Offer and Acceptance any unusual provisions or deviations, particularly those proposed for the contract which could affect the prices quoted. Such unusual contractual requirements shall also be identified in the submittal of the price and availability data to the Departmental activity responsible for providing the DoD Offer and Acceptance to the foreign country. If the Departmental activity expands, modifies or does not accept such requirements, the contractor shall be advised prior to the submission of the offer to the foreign country.

(3) Whenever applicable, the contracting officer shall request contractors to identify any anticipated logistic support necessary in order to perform the contract.

225.7304 Pricing acquisitions for foreign military sales.

(a) *General.* When the Department of Defense undertakes purchasing for sale to a foreign country which has committed itself to bear the cost of the acquisition, the Department of Defense assumes responsibility to see to it that no more than a fair price is paid for the acquisition. Accordingly, FMS contracts shall be priced on the same principles and with the same care as are used in pricing normal defense contracts. This does not mean that prices of normal defense contracts for an item are automatically applicable to FMS contracts for the same item. On the contrary, application to FMS contracts of the pricing principles established by FAR part 15 and FAR part 31 may require pricing results that differ from normal defense contract prices for the same item because certain kinds of costs may reasonably and allocably arise in different amounts for the former than for the latter. In this regard, known FMS requirements shall be separately identified in solicitations.

(b) *Commercial sales to foreign customers.* If the contractor has made sales of an item to foreign customers under comparable conditions, including quantity and delivery, the pricing of FMS contracts shall be in accordance with FAR part 15.

(c) *Cost of doing business with a foreign government or an international organization.* (1) In pricing FMS contracts, where non-U.S. Government prices as described in (b) do not exist, recognition should be given to costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the

United States would be recognized in pricing normal defense contracts. Thus, recognition should be given to reasonable and allocable costs, even though such costs might not be recognized in the same amounts in pricing normal defense contracts. Examples of such costs include, but are not limited to, the following:

(i) Selling expenses (not otherwise limited by FAR part 31); e.g.: organizations;

(A) Maintaining international sales and service organizations;

(B) Sales commissions and fees in accordance with FAR subpart 3.4;

(C) Sales promotions, demonstrations, and related travel for the purposes of sales to foreign governments; however, such costs may be recovered against U.S. Government contracts for U.S. Government requirements in accordance with DFARS 231.205-38(c) (S-70). These expenses may be recovered; *Provided*, that when required by paragraph 126.8 of the International Traffic in Arms Regulations (ITAR) (22 CFR part 121), such promotion or demonstration has received U.S. Government approval.

(D) Configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product support and postdelivery service expenses; e.g.:

(A) Operations or maintenance training, training or tactics films, manuals, or other related data;

(B) Technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of DoD offset arrangements.

(iv) Costs that are the subject of advance understanding, in accordance with the appropriate provisions of FAR part 31, or where the advance understanding places a limit on the amounts of cost that will be recognized allowable in defense contract pricing, and the understanding contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(2) Costs that are not allowable under FAR part 31 are not allowable in pricing FMS contracts.

(3) The provisions of Section 203, Pub. L. 91-441, do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs incorporated in part 231, and on independent research and development (IR&D) costs incorporated in Part 231 shall not be applicable to contracts for Foreign Military Sales. IR&D and B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

(4) Pursuant to section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States shall make appropriate charges for administrative services in order to recover the estimated cost of administration of sales made under the Arms Export Control Act.

(d) *Government-to-government agreements.* In the event a government-to-government agreement between the United States and a foreign government, for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item or support item, contains language in conflict with the provisions of (a) through (c) above, the language of the government-to-government agreement shall prevail.

[51 FR 46199, Dec. 23, 1986, as amended at 52 FR 34789, Sept. 15, 1987; 53 FR 51560, Dec. 22, 1988]

225.7305 Sales commissions and contingent fees on foreign military Sales.

(a) *Scope.* This section provides policies and procedures for determining the applicability and allowability of sales commissions and contingent fees on FMS purchases. It supplements the policies contained in 225.7304(c)(1)(i), FAR part 31, and FAR pubpart 3.4.

(b) *Policy.* Sales commissions and contingent fees are allowable under defense contracts; *provided;* that, in accordance with FAR part 31 and FAR subpart 3.4, the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor (hereinafter referred to as contractor) for the purpose of securing business (but see 225.7305(f)). For FMS, it is extremely difficult for the Department of Defense to verify the services rendered or the value of services by bona fide employees or bona fide established commercial or selling agencies. Therefore, it is the policy of the Department of Defense that the allowable cost of sales commissions and contingent fees (as defined in FAR subpart 3.4) anticipated to be included in FMS contracts is limited to $50,000, and such fees or commissions shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

(c) *DoD offer and acceptance procedures.* (1) In submitting an Offer and Acceptance to a foreign government which is known to contain a salès commission or fee, the Department of Defense will include:

(i) The name and address of the sales representative;

(ii) The estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and

(iii) A statement indicating one of the following, whichever is applicable:

(A) Appropriate officials within the U.S. Department of Defense consider the fee to be fair and reasonable;

(B) In the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect, together with the rationale therefor; or

(C) The U.S. Department of Defense cannot determine reasonableness of the proposed fee.

The notification in the Offer and Acceptance may also include the contractor's explanation of or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

(2) The Offer and Acceptance also will include a statement to the effect that acceptance of the offer by the purchasing government, after receipt of the appropriate notification outlined above, will constitute that government's approval of the sales commission or fee involved. No fee shall be accepted by the Department of Defense if disapproved by the purchasing government.

(3) There may be occasions, as when FMS requirements are to be fulfilled by competitive acquisitions, when it is not possible to determine prior to presentation of the Offer and Acceptance whether or not the price to be paid for material or services will include sales commissions and fees. In such cases, the purchasing government will be notified (by DoD officials responsible for presentation of the Offer and Acceptance) as soon as possible if subsequent contract negotiations indicate that a sales representative's charges will be claimed by the contractor. This notification will include the information outlined in (1) above, along with an indication that the Department of Defense will determine whether or not to accept such costs as a valid charge to the contract, unless contrary notification is received from the purchasing government within 30 days of the date of the notification.

(4) If in making the determination required by FAR Subpart 3.4 and (d)(3), the responsible contracting official determines that a sales representative is not bona fide for reasons other than reasonableness of fee, no Offer and Acceptance will be tendered pending withdrawal by the prospective contractor of the fee for such sales representative from his proposal.

(d) *Applicability and allowability of sales commissions or fees.* (1) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported, based on the criteria in (2) below. If deviations to this policy are considered necessary, FAR 1.4 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(2) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in FAR Subpart 3.4, shall:

(i) Require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) Determine under FAR subpart 3.4 whether a bona fide employee or agency relationship exists (for the purposes of FMS, the definition in FAR subpart 3.4 of improper influence also extends to officials of the foreign government);

(iii) Require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 225.7305(c)(1)(iii) is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(3) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 225.7305(c)(1)(iii) fee statements), subject to the approval of the chief of the contracting office.

(e) *Contracting procedures relating to sales, commissions and fees.* If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by (c) above, the foreign government disapproves the fee, or a portion of the fee, the contracting officer shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

(f) *Special country requests with respect to sales commissions and fees.* Pursuant to DoD Manual 5105.38-M (Security Assistance Management Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, United Arab Emirates, or Venezuela (Air Force) are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall on behalf of these purchasers, insert the clause at 252.225-7017, Limitation of Sales Commissions and Fees for Foreign Governments, in all solicitations and contracts for FMS requirements unless such payment has been approved.

[51 FR 46199, Dec. 23, 1986, as amended at 52 FR 34789, Sept. 15, 1987; 53 FR 38247, Sept. 29, 1988]

225.7306 [Reserved]

225.7307 Source selection.

(a) Purchases for FMS customers shall be implemented under normal acquisition and contract management procedures set forth in the FAR and this supplement, and other directives. However, the FMS customer may request that a defense article or defense service be obtained from a particular prime source. In such cases, FAR 6.302-4 provides authority to contract without full-and-open competition. The FMS customer may also request that a subcontract be placed with a particular firm. The contracting officer shall honor such requests from the FMS customer only as specified in the Letter of Agreement or other written direction by the military sales organization.

(b) Representatives of the FMS customer shall not be permitted to direct the deletion of names of firms from bidders mailing lists or slates of proposed A-E firms. They may, however, suggest that certain firms be included. Contracting offices shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2 of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless the rejection is justified on the basis of reasons which would be sufficient in the case of a purchase by the Department of Defense to meet its own needs.

225.7308 Limitation of Liability.

In acquisitions for FMS, the foreign purchaser shall be advised that the appropriate Liability clause(s) (see FAR subpart 46.8) is included in the FMS contract (see Condition C on the DD Form 1513). If the foreign customer does not agree to assume the risk for loss or damage as provided in the clause(s) and objects to the inclusion of such clause(s) in the Offer and Acceptance, the contractor shall be so advised. The costs of necessary insurance, if any, to be obtained by the contractor to cover such risk of loss or damage shall be considered in establishing the FMS contract price of such items.

225.7309 Exercise of options for foreign military sales.

Exercising an option to satisfy an FMS requirement may introduce the need to consider changes to costs and profit attributable to pricing differences between U.S. and FMS contract requirements. Such consideration may also be necessary if the option is already identified for FMS but it is exercised for country B requirements instead of the country A requirements to which it was priced. In order to provide for and better permit the inclusion of priced options in the contract and their subsequent exercise for FMS requirements whether or not the specifics are fully known at the time of award, the contracting officer should consider the use of the clauses prescribed at 217.207(S-70).

225.7310 Implementation of offset arrangements negotiated pursuant to foreign military sales agreements.

(a) *Scope.* This section sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement. An "FMS/offset arrangement" is that which is negotiated pursuant to an FMS agreement wherein the Department of Defense agrees to place on a contractual basis and consistent with the guidance in 225.7310(b)(2), a certain percentage of the FMS agreement dollar value or a stated dollar objective in that country with which the FMS agreement has been negotiated. The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. Australia, Belgium, Denmark Netherlands, and Norway, have FMS/offset arrangements negotiated pursuant to FMS agreements. However, Belgium, Denmark, Netherlands, and Norway are also participating NATO countries and are accorded preferences under subpart 225.74.

(b) *General.* (1) Since May 4, 1978, it has been DoD policy not to enter into government-to-government offset agreements because of the inherent difficulties in negotiating and implementing such arrangements. Exceptions to this policy must be approved by the Secretary of Defense or his Deputy and will only be made when there is no feasible alternative to ensure the successful completion of FMS transactions considered to be of significant importance to the national security interests of the United States.

(2) When authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for which foreign sources may obtain contracts up to a specified offset level and in accordance with the terms and conditions of the particular DoD offset agreement. Normally, FMS/offset arrangements should be negotiated prior to the FMS agreement Offer and Acceptance in order that the Department of Defense and its prime contractors will have an opportunity to assess in advance the DoD's or contractor's ability to fulfill the FMS/offset arrangement, and include in the offer those DoD and contractor costs associated with such arrangements.

(3) If an exception is granted pursuant to paragraph (1) above, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if it is determined that the FMS/offset arrangement cannot be fulfilled in this fashion will the Department of Defense seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. prime contractor shall be contacted and coordination obtained prior to the Government's committing the U.S. prime contractor's participation.

(4) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy in consultation with the Office of the Assistant Secretary of Defense (International Security Affairs), from which DSAA derives overall policy guidance. The Office of the Assistant Secretary of Defense (Production and Logistics) (OASD(A&L) is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General information regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries through the Departments to the Director for Foreign Contracting, OASD (P&L) (P).

(c) *Procedures.* (1) Whenever an FMS agreement involves a single major weapon system, the Department responsible for acquisition of the weaponsystem will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more Departments, OASD(A&L) may either direct that one Department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with (4) below; (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary); and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under FAR 25.102, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (2)(i) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(2) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 225.7403(a)(1) for participating countries (see also 225.402(b)). When soliciting sources outside the United States, international air mail shall be utilized where secu-

rity classification permits. See 214.202-1, FAR 14.203-1, and FAR 15.408(c). For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 225.7403(a)(3). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (2)(i) below. The list set forth at 225.7405 shall also apply to FMS/offset arrangement countries as shall 225.402(b).

(i) To obtain an exemption, under FAR 25.102, of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items, or modified as necessary for components.

SERVICE OR AGENCY EXEMPTION OF THE BUY AMERICAN ACT (41 U.S.C. 10a-d) DETERMINATION AND FINDINGS

Upon the basis of the following findings and determination which I hereby make in accordance with the provisions of FAR 25.102, acquisition of an (FMS/offset arrangement country) (describe item) may be made as provided below.

Findings

1. The (Contracting Activity) proposes to purchase ________, under contract number ______, mined, produced or manufactured in (country of origin). The total estimated cost of this acquisition is ______.

2. The United States Government (USG) and the Government of ________ have entered into an FMS/offset arrangement whereby the Government of ________ will purchase US defense articles and services and the USG, through the Department of Defense (DoD), if necessary, will offer potential DoD requirements suitable for purchases of (FMS/offset arrangement country) defense items.

3. The Agreement provides that competitive offers of (FMS/offset arrangement country) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (FMS/offset arrangement country) items may better compete, for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (FMS/offset arrangement country) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives the solicitation contained the Buy American Act and Balance of Payments Program clause, 252.225-7001, or the Buy American Act, Trade Agreements Act, and the Balance of Payments Program clause, 252.225-7006 which state that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an (FMS/offset arrangement country end item) is found to be acceptable.

Determination

Pursuant to the Buy American Act (41 U.S.C. 10a-d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

____

(Date)

____

(Secretary of Department)

(3) To assure that the policy of 225.602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clauses at FAR 52.225-10, Duty-Free Entry, and 252.225-7007, Supplies to be Accorded Duty-Free Entry, in contracts which either contribute, or anticipate to contribute, to the fulfillment of an FMS/offset arrangement.

(4) The clause set forth at 252.225-7018, Offset Arrangement, shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth.)

(5) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals of FMS/offset arrangement country end products should indicate that the price evaluation of offers will be accomplished without the application of the Buy American Act or the Balance of Payments Program differentials or duty, which would otherwise be applied to the price evaluation in accordance with other paragraphs of this part 225. If on the basis of such evaluation, an offeror proposing an end product from an FMS/offset arrangement country source is low, the matter will be forwarded to the Secretary of the Department for consideration as to whether it would be in the public interest to exempt the end product from the restrictions of the Buy American Act (see FAR 25.102) and the Balance of Payments Program regulations. FMS/offset arrangement country sources, in competing for DoD purchases under a DoD FMS/offset program, must be responsive to the terms and conditions of DoD solicitations unless otherwise specifically provided for in the FMS/offset arrangement with the FMS/offset arrangement country. DoD contracting activities must also comply with all other laws and regulations governing foreign purchases, such as security restrictions and disclosure of information to foreign nationals.

(6) In a general FMS/offset arrangement which contemplates foreign competition with U.S. sources for defense contracts (as opposed to one structured to be accomplished within the FMS prime contracts for that sale), the preferable procedure is to require the foreign government to propose, from time to time, specific defense-related items which appear susceptible to competition by companies in that country. When such proposals are made, the foreign government will include the names and addresses of the foreign sources which that foreign government considers qualified to perform the work. However, in order to ensure fulfillment of the FMS/offset arrangement within the specified time limits, the Departments are also expected to exercise initiative in seeking out items which might be suitable for such foreign competition and in making arrangements through the foreign government, if necessary, to identify suitable sources.

(d) *Quality Assurance Agreement with Australia.* The Department of Defense of the United States and the Department of Defense of Australia have agreed to provide to each other, quality assurance services upon request for all contracts involving defense supplies and services in accordance with the terms of the Details of Agreement (D of A), Mutual Acceptance of Government Quality Assurance. (See appendix T-101.1 and 246.406(73).)

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38175, 38247, Sept. 29, 1988; 54 FR 53617, Dec. 29, 1989]

225.7311 Use of Government production and research property on work for foreign governments or international organizations.

See 245.405.

225.7312 Exclusionary policies and practices of foreign governments.

All contracts for the purchase of goods or services for Military Assistance Programs (MAP), International Military Educational Training (IMET), and Foreign Military Sales (FMS) shall include the clause in 52.225-7019, Exclusionary Policies and Practices of Foreign Governments.

225.7313 Nonapplicability of rates under 49 U.S.C. section 10721 (formerly "Section 22 Rates").

(See FAR 47.104-2.)

225.7314 Specific FMS/offset agreements.

Specific FMS/offset agreements are included in appendix T, subpart 1.

Subpart 225.74—Purchases From NATO Participating Country Sources

225.7400 Scope of subpart.

This subpart implements the Memoranda of Understanding (MOU) between the United States and participating countries.

225.7401 Policy.

In order to increase the defense capabilities of NATO through more efficient cooperation in the field of research and development, production, and acquisition of defense equipment, the United States has entered into Memoranda of Understanding with Canada, the Federal Republic of Germany, the Government of Italy, the United Kingdom of Great Britain and Northern Ireland (U.K.), the Government of Norway, the Kingdom of the Netherlands, the Government of Portugal, the Government of Belgium, the Government of Denmark, the Government of France, the Government of Turkey, the Government of the Grand Duchy of Luxembourg, the Government of Israel, and the Government of Spain. The objective of each MOU is to facilitate the defense of North America and Europe so as to achieve:

(a) Greater cooperation in research, development, acquisition, and production;

(b) The most rational use of their respective industrial, economic, and technological resources;

(c) The greatest attainable military capability at the lowest possible cost; and

(d) Greater standardization and interoperability of their weapon systems.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs between the participating countries and the United States and to ensure that sources from participating countries are provided every opportunity to compete on a fair and equal basis with U.S. sources for research and development and for production contracts consistent with 225.7402(b). Accomplishment of this policy requires exemption of foreign acquisition restrictions with respect to all items of defense equipment from participating countries. (See also 225.402(b).)

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38203, Sept. 29, 1988]

225.7402 MOUs with NATO participating countries.

(a) The MOUs set forth acquisition policies with respect to defense equipment from sources in participating countries.

(b) Applicability. This subpart applies except where restricted by (1) provisions of U.S. National Disclosure Policy (NDP), DoD Directive 5230.11; (2) U.S. defense mobilization base requirements as specified in 208.73, 208.74, and 208.75; (3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act (225.70); and (4) U.S. Industrial Security Requirements.

225.7403 Procedures for purchases from participating countries

(a) *Solicitation procedures*—(1) *Solicitation of sources in participating countries.* (i) Participating country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in FAR 14.205. Requests of this nature should be forwarded by participating country sources to the activity having acquisition responsibility for the supplies involved.

(ii) The normal criteria for soliciting and making awards under FAR Part 19 for small business concerns and FAR part 20 for labor surplus area firms shall be utilized without regard to the fact that there are potential participating country sources for the end product, except items developed under the U.S./Canadian Development Sharing Program. Offers of a foreign end product shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(iii) Solicitations shall be sent directly to participating country sources appearing on the appropriate bidders mailing list except when restricted by 225.105, 225.7402(b), 225.7405 and (ii) above. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 225.7104. When solicitation destinations are outside the United States, international air mail shall be utilized where security classification permits (see FAR 14.202 and FAR 14.203).

(iv) Upon request, solicitations shall be furnished to the embassy or other designated place or representative of the participating country.

(v) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from participating country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from participating countries.

(vi) Participating country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a Department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from participating country sources which have been tested and accepted by the participating country for service use, subject to U.S. confirmatory test, if necessary. Where it appears that these provisions might adversely delay service programs, the concurrence of the Department of Defense Acquisition Executive, USDRE, shall be obtained prior to exclusion of the participating country item from consideration. Sufficiency of participating country service testing should be considered on a case-by-case basis. When confirmatory tests of participating country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(vii) Subject to 225.7402(b), industry representatives from a participating country shall be permitted to attend symposia, program briefings, prebid conferences (FAR 14.207 and FAR 15.409), and like meetings which address U.S. defense equipment needs and requirements. When practical, these meetings should be structured so as to allow attendance by representatives of participating country concerns.

(2) *Submission of offers.* Participating country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(3) *Evaluation of offers from participating country sources.* (i) In furtherance of the objectives set forth in 225.7401, the Secretary of Defense has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payments Program with respect to acquisition of defense equipment (for items for civil works activities, see 225.105(S-75)) which is mined, produced, or manufactured in a participating country.

(ii) In accordance with the above, offers of participating country end products shall be evaluated without the application of the price differentials normally applied pursuant to the Buy American Act and Balance of Payments Program requirements contained in 225.105 and subpart 225.3. This exemption shall further include the following consideration: In the event that a domestic offer, a participating country offer, and a nonqualifying country offer compete for defense equipment, the participating country offer shall be evaluated without applying the price differentials of 225.105, whereas the nonqualifying country offer shall be subjected to the price differentials. (See 225.105(S-72), Example E.) However, in the event that the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted. (See 225.105(S-72), Example F.) In the event that a participating country offer competes against a nonqualifying country offer and no domestic offer is submitted, the participating country offer shall be evaluated on an equal basis with the nonqualifying country offer. (See 225.105(S-72), Example G.) Participating countries are listed at 225.7401.

(iii) As to any end product that is manufactured in the United States, all components from participating countries are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(iv) In keeping with the policy to enhance cooperation with the participating countries, U.S. duty-free entry shall be accorded supplies from participating countries by the issuance of duty-free entry certificates. Offers of defense equipment from participating country sources shall be evaluated without application of duty. Such duty-free entry shall be accorded whenever such supplies are acquired at a prime contract or at a subcontract level. (See also 225.602 for postaward circumstances of fixed-price type contracts.) The resulting contract shall include the appropriate clause(s) referenced in 225.605.

(v) If, when evaluated in accordance with the above, an offer of a participating country end product is determined to be from the lowest, responsive, responsible offeror, the cognizant contracting officer shall normally proceed to make award to that offeror. However, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a participating country source in those instances where such restriction or rejection is considered necessary for reasons of the national defense.

(b) *Subcontracting with participating country sources.* In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contract does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations.

(c) *Required clause.* As prescribed at 225.109(d)(S-72), the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, shall be inserted in solicitations and contracts.

(d) *Industrial security for participating countries.* Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation DoD 5220.22-R (implemented for the Army by AR 380131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205-4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240-50-7; and for the Defense Mapping Agency by DMA Inst. 5520.22).

225.7404 Contract administration.

When contract administration services are requested on contracts to be performed in participating countries, except Canada, the request should be directed to the cognizant activity in accordance with DoD 4105.59-H, section II, part 2 (DoD Directory of Contract Administration Services Components). Contract administration services required with respect to DoD subcontracts placed by participating country sources, except Canada, in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59H, section II, part 2 (DoD Directory of Contract Administration Services Components).

225.7405 List of excluded items.

The policies and procedures of this subpart do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers. This is a representative list and changes may be made at the discretion of the applicable Agency or Service. Individual solicitations should be reviewed to determine whether this restriction has been applied. Information concerning this list may be obtained from OASD(P&L), Office of Industrial Base Assessment. (See also 208.73, 208.74, 208.75, 208.76 and 208.78.)

ARMY

L.A.P.

Manufacturing and testing of projectiles (5.56 mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components.

Maintenance of idle portions of 22 GOCO facilities.

Air Inflatable Retarders

BSU-49/B, BSU-50/B

Black Powder

Classes 2, 3, 7

Bomb Bodies

MK82, MK83, MK84, MK118-0, BDU-45/B, BDU-50/B

Bomb Practice

BDU-33D/B

Bomblet

MK118

Box, Metal

M2A1, M19A1, M548

Box, Plastic

M621, (25 mm)

Cable Assemblies

M72, M73

Cartridges

50 CAL—M1, M8, M17, M20, M33
5.56mm—M193, M855 (Ball)
7.62mm—M80
20mm—M55A2, M56A4
25mm—M791, M792, M793, MK210, PGU-20, PGU-23, PGU-25, HEI-T, XM910
30mm—M788, M789, PGU-13/B, 14/B, 15/B. (GAU-8)
TANK—MK11-0, MK14-3
IMPULSE—M796 (F/M206)
MISC—MK4-3 Bomb Sig PB, Body Assy. M430
81mm—M301A3, M821, M853, M889
84mm—M136(AT-4)
105mm—M774, M833, M456A2, M490A1, M724A1.
4.2in—M329A2.
120mm—M829, M830, M831, M865.
misc—Signal MK4-3, Grenade, Smoke M76

Cartridge Cases

40mm—M118, M169
76mm—Steel
105mm—M148A1B1, M115B1
5"/38—MK10-1
5"/54—MK79-1

Casings, Burster

1mm—M158
.2"—M14

Castings & Forgings

Gun Tube & Preforms Forgings
105mm—M2A2, M68A1, M137A1; 120mm—M256; 155mm—M1A2, M185, M199; 165mm—M135; 8"—M201A1)
Breech Ring Forgings (105mm—M2A2, M68A1, M137A1; 120mm—M256; 155mm—M1A2, M199; 8"—M201A1)
Breech Block Forgings (120mm—M256)
Cast Muzzle Brakes (155mm—M185, M199; 8"—M201A1)
Housing Castings (155mm—M199) Base Plate Forgings

Charge, Demo

MK75-0, MK138-1 (Chrg. Assy), 40 lb. Cratering, 151 lb. Cratering, M118 Demo Block

Chemical

M8A1 Chemical Agent Alarm

Containers, Ammo

CNU-238/E, CNU-319/E, CNU-327/E, CNU-332, CNU-335A/E, CNU-336A/E, ALS, Increment Container F/81mm M205
Charge Tank CTG—MK11-0 (F/76mm), MK14-3 (F/5"/54)

Dispenser

MK7-3 F/ROCKEYE, MK7-4 F/ROCKEYE

FASCAM Mine Components

GATOR Body Assy, GEMSS Body Assy,
GATOR Extended Range Tripline Sensor, GEMSS Extended Range Tripline Sensor, FASCAM Battery, ADAM Housing, Timing, & Fuzing Assy, RAAM Safe & Arming Device, GEMSS Safe & Arming Device, GATOR Safe & Arming Device, RAAM Electronic Lens Assy, GEMSS Electronic Lens Assy, GATOR Electronic Lens Assy

Fin Assemblies

60mm Steel, M27 F/60mm, M24 F/81mm, BSU-86/B, MK15-4, MK84

Firing Devices

M142 MP

Flares

LUU-2/B, M206, MJU-2B, MJU-7B, MJU-8B, MJU-10B, MK46-1C, SUU-25 F/A

Fuzes

FMU-130/B, FMU-139/A, FMU-139/B, M201A1, M213, M223, M228, M230, M403, M418, M423, M427, M439, M505A3, M509A2, M549, M550, M567, M577A1, M582A1, M732A1, M734, M739A1, M758, M935, M936, MK1-0, MK54, MK72-17, MK73-13, MK339-1, MK342-1, MK352-2, MK393-0, MK395, MK396, MK403, MK404-0, MK407-1, MK417-0, MK418

Fuze Components

PS-115 F/Fuze Prox M732

Guns & Receivers

M2 Machine Gun (Fixed or Flex), M60/M60D Machine Guns, M240 Machine Gun, 9mm Pistol, 20mm Cannon (M249 (SAW) Squad Auto Weapon)

Grenades

M42E2 (155mm), M46E1 (155mm), M42E2 (8″), M46E1 (8″), M509 (8″ MLRS), M77, XM77 Body, Cones (F/M42E2, M46E1, M77) BLU-91B Body Assembly, BLU-92B Body Assembly

Helicopter

LHX (DEM/VAL)

Launchers

M203 (40mm)

Links

M9 (50 CAL), M15A2 (50 CAL), M22, M27 (5.56mm), M13 (7.62mm), M10 (20mm), M14A2 (20mm), M16A2 (40mm)

Periscopes/Vision Blocks

M17, M27, M37, M45, 15 Degree Up-Look, 20 Degree Up-Look, Periscope F/M1 Tank

Plugs

MK11-1, MK12-3

Primers

MK41-0, MK45-1, MK153, MK161, MK28B2

Projectiles

155mm—M483, M483A1, M692, M712, M718, M731, M741
8″—M509A1 ICM, M509, M650
16″/50—MK142

Projectiles/Shell Metal Parts

20mm—MK68, M55A2, M56A4
40mm—Projectile MPTS F/M430, F/M433
60mm—Projectile MPTS F/M720
76mm—Projectile Body
81mm—M374A1
105mm—M456A2 (Spike Assy Spike Cap Assy Cone) M833 (Projectile Assy Core) M724A1
120mm—Projectile Assy Core F/M829
155mm—M107, M549 Motor Body M864, M485A2, M692/M731, M712, M718/M741/M718A1/M741A
8.0in—M106, M650 (AFT & FWD), M509A1
4.2″—Shell F/M328A1, F/M329A2, F/M335A2
5/54—MK48-1, MK61-0, MK64-1, MK82 (AFT & FWD)

Propellants/Explosives (or Equal)

COMP D-2, HPC-2, HPC 13 M200 BIK LK, 1030 M813 (40mm), 1100 PBX-9501 WC-814, WC-818, WC-844, WC-844T WC-844 REFER, WC-846, WC-860, WC-872, WC-875, COMP D-2, HMX Bulk RDX Bulk

Protective Masks Chemical/Biological Protective Masks

M40 Chemical/Biological Protective Filters/Canisters (For Masks) C2 Canister

Radius

AN/VRC-12 RSF Spare Parts

Rangefinder

Laser Rangefinder

Reserve Energizers

MK38-0, MK40-0, MK43-0

Rifle

M16A2

Rockets

M73 (35mm SUB-CAL)

Rocket Motor

MK25-1, Rocket Assist F/M650 (8″)

Rocket Motors Tubes

MK66 (HYDRA 70), MK71-1 w/Contact Band (Zuni)

Rocket Fin & Nozzle Assy

MK66-2 (HYDRA 70)

Safe and Arming Devices

M114, S&A F/M739 FZ

Satellite COMM

AN/TSG SAT COMM TERM

Signals

MK79-0 (Personal Distress Kit)

Single Channel Ground/Air Radio System (SINCGARS)

AN/PRC-119, AN/VRC-87, AN/VRC-88 AN/VRC-89, AN/VRC-90, AN/VRC-91 AN/VRC-92, AN/ARC-201

Suspension Lugs

MK3, MK-14-0
TOW MISSILE
TOW NIGHT SIGHT
HAWK
AAWS-M
PATRIOT
PATRIOT MISSILE CANISTERS
CAMOUFLAGE SCREENING SYSTEMS
BA-5598, BA-5567, BA-5590
MX-9644

RADAR WARNING RECEIVER, AN/APR-39A (V)1
INERTIA NAVIGATION SET, AN/ASN-86
NIGHT VISION GOGGLES, AN/PVS-5
AVIATORS NV IMAGING SYSTEM, AN/AVS-6
IMAGE INTENSIFIER ASSY, MX-10160
INDIVIDUAL SERVED WEAPON NIGHT VISION SIGHT, AN/PVS-4
CREW SERVED WEAPON NIGHT VISION SIGHT, AN/TVS-5
DRIVERS VIEWER, AN/VVS-2
NIGHT VISION GOGGLES, MONOCULAR
RADAR SIGNAL DETECTING SET, AN/APR-39A (V)2
ARTILLERY LOCATING RADAR, AN/TPQ-37 (V)4
ROAD WHEELS FOR COMBAT AND COMBAT SUPPORT VEHICLES
ROUGH TERRAIN CONTAINER CRANE
HEMTT (HEAVY EXPANDED MOBILITY TAC. TRUCK)
M939A1 5 TON TRUCKS
M1A1 TANK
TADS/PNVS
HOVER INFRARED SUPPRESSOR SYSTEMS
MAST MOUNTED SIGHT FOR SHIP
AIR TO AIR STINGER
AH-64
AN/TPQ-36
BATTERY, STORAGE, 4HN, 6TN

NAVY

Missile and Missile Components:

AIM/RIM-7M SPARROW Missile—Guidance Control Section with Wings and Fins, MK-58 MOD 4 and 5 Rocket Motor, MK-108 Inert Rocket Motor, MK-33, MOD 0 Safe and Arm Device, WEU/3B Warhead (Empty), WAU-17A/B Warhead (Loaded), and Telemetric Data Transmitting Set AN/DKT-38, AN/DKT-37(D), and AN/DKT-61;
AIM 54C PHOENIX Missile—WPU-3/B Propulsion Section (with MK-47 MOD 1 Rocket Motor and FSU-10/A Composite Fuze), DSU-28D/B Target Detecting Device, MD-13 MOD 0 Fuze Triggering Device, WDU-29/B Warhead, MK-60 MOD 2 Fuze Booster;
AIM-9M SIDEWINDER Missile—WGU-4A/B Guidance and Control Section, MK-36 MOD 11 Reduced Smoke Rocket Motor, WDU-17/B Loaded Warhead, DSU-15A/E or B/B Active Optical Target Detector, MK-13 MOD 2 Safe and Arm Device, MK-1 MOD 2 Wing Assembly, BSU-32/B Fin Assembly;
TOMAHAWK Cruise Missile—including Guidance Section, F-107 and F-402 Engine (including spares), Reference Measuring Unit and Computer (including spares), Cruise Missile Radar Altimeter (including spares), MK-106 MOD 0 and EX-111 IRM (MK-111 Rocket Motors (including spares)); Digital Scene Matching Area Correlation (DSMAC), FMU-138/B Fuze, FZU-43/B Air Valve, Capsule Launching System (CLS), AN/SWG-2 (V) and AN/SWG-3 (V) Common Weapon Control System (CWCS)
TRIDENT II, MK-6 Guidance and Components, Inertial Measurement Unit (IMU), IMU Electronics, Electronics Assemblies, Camera Detector Assembly;
Tactical Rocket Motors and Inert Rocket Motors for High Speed Anti-Radiation Missile (HARM);
Standard Missile Two Block II Guidance, Control and Autopilot/Battery Sections and all-up-rounds for Aegis, Terrier and Tartar Class Ships:
Standard Missile II MK-45 MOD 8 Target Detection Device, MK-70 Booster, MK-104 Dual Thrust Rocket Motor, MK-115 Warhead, MK-70 Inert Parts; and Standard Missile Two Block II A Vertical Launch Configuration

Avionics

AN/AYK-14 (V) Computers

Surface Ship and Submarine Systems:

Type 18B/D Periscope System, TR-155, K-33 Transducers, Periscope Tubes, Noise Tested Bearings
MK-45 Mod 1 Gun Mounts; MK-6 Ammunition Hoists; MK-41 Vertical Launch System; Phalanx CIWS MK-15 Block 1 Weapon Systems and Block 1 ORDALT kits
AWS T-1348/SPG Radar (CWI) Transmitter
Ship Propulsion Shafts, Ring Forging for Bull Gears greater than 120 inches in diameter, Anchor Chains

Engines

F404-GE-400D Engines

Guns

MK19 MOD 3 Machine Gun and MK 64 Gun Mounts

Sonobuoys:

AN/SSQ-36, AN/SSQ-53D, AN/SSQ-62B, AN/SSQ-77A, AN/SSQ-103 (Low Cost Sonobuoy)

Standard Missile:

MK-51 MOD 0 Safety Arming Device
MK-76 MOD 0 Safety Arming Device

AIR FORCE

MAC Commercial Airlift

DEFENSE LOGISTICS AGENCY

Chemical Protective Suits (Army)

Chemical Protective (BUTYL) Gloves
Dress Coats
Helmets PASGT
Meal, Ready-to-Eat (MRE)
Nerve Agent Antidotes
Rabies Immune Globulin
Shirts: Navy Chambray (Work) & Army Dress
Surgical and Dental Instruments
Surgical Gloves
Tetracycline

[53 FR 38203, Sept. 29, 1988, as amended at 54 FR 53617, Dec. 29, 1989]

225.7406 Specific reciprocal memoranda of understanding with NATO participating countries.

Specific reciprocal memoranda of understanding with NATO participating countries are included in appendix T, subpart 2.

Subpart 225.75—Purchases From Defense Cooperation Country Sources

225.7500 Scope of subpart.

This subpart implements the defense cooperation agreements made by the United States pursuant to other than Foreign Military Sales agreements.

225.7501 Policy.

In order to increase their respective defense capabilities through more efficient cooperation in the research and development, production, and acquisition of defense equipment, the United States and the Government of Egypt have entered into a defense cooperation agreement. The purpose of this agreement is to promote the most cost-effective and rational use of defense appropriations of the United States and the defense cooperation country. Accordingly, it is Department of Defense policy to achieve the best possible coordination of the materiel programs between such countries and the United States and to ensure that sources in defense cooperation countries are provided the opportunity to compete on a fair and equal basis with U.S. sources for selected research and development, production and service contracts subject to the restrictions of 225.7402(b). Accomplishment of this policy requires the exemption of certain Buy National laws and foreign acquisition restrictions with respect to selected defense equipment purchased from defense cooperation country sources. For the purposes of solicitation and evaluation of such selected defense equipment, offers of defense cooperation country end products shall be treated as if they were participating country end products, except as provided in 225.402(b).

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 38205, Sept. 29, 1988]

225.7502 Procedures.

(a) *Solicitation procedures.* Defense cooperation country sources shall be solicited as if they were sources from participating countries. The procedures set forth at 225.7403(a)(1) shall apply.

(b) *Submission of offers.* Defense cooperation country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations. The Buy American Act and the Balance of Payments Program restrictions are waived only for items listed in appropriate annexes to the agreements with the defense cooperation country. However, the absence of an item from the defense equipment list is without prejudice to the authority of the Secretary to determine in any individual case that application of the restrictions to that item would be inconsistent with the public interest. Copies of these lists may be obtained from the Director for International Acquisition, ODASD(P).

(c) *Evaluation procedures.* Defense cooperation country offers shall be evaluated as if they were participating country offers. The procedures set forth at 225.7403(a)(3)(ii) shall apply.

(d) *Other procedures.* Contracting procedures, industrial security procedures and contract administration procedures for defense cooperation country sources shall be conducted as if they were sources from participating countries. The procedures and policies set forth at 225.7403(c), 225.7404, and 225.7405, and throughout this regulation shall apply.

225.7503 Specific memoranda of understanding with defense cooperation countries.

Specific memoranda of understanding with the Defense cooperation countries are included in appendix T, subpart 3.

Subpart 225.76—Use of U.S.-Owned Foreign Currency for Payments

225.7600 Scope of subpart.

This subpart implements the Government's policy that U.S.-owned foreign currency be used when feasible in payment of purchases in foreign countries.

(a) This subpart applies to acquisitions of supplies, services, or construction for use outside the United States.

(b) This subpart does not apply to acquisitions (1) funded from Special Foreign Currency Program Appropriations; or (2) made under Subpart 225.1.

225.7601 Definitions.

As used in this subpart, the following terms have the meanings set forth below:

Excess Foreign Currency means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in the OMB Bulletin, "Excess Foreign Currencies", published annually in accordance with OMB Circular A-20. This Bulletin is distributed through agency procedures.

Near-Excess Foreign Currency means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in the OMB Bulletin, "Excess Foreign Currencies", published annually in accordance with OMB Circular A-20. This Bulletin is distributed through agency procedures.

U.S. Dollar Content means the U.S. dollar cost to an offeror for domestic source end products or services (including costs of transportation furnished by U.S. flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

U.S.-Owned Foreign Currency means currency of a foreign country which currency is:

(a) Owned by the United States;

(b) Determined excess or near-excess by the United States Department of the Treasury;

(c) Available in the country of issuance to pay obligations of the United States within that country; and

(d) Disbursed by the United States Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

[51 FR 46199, Dec. 23, 1986, as amended at 53 FR 50415, Dec. 15, 1988]

225.7602 Procedures.

(a) Except as provided in (c) below, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the provision in 252.225-7020, Option to Award and Pay in United States Owned Foreign Currency, when it can reasonably be expected that (1) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency; or (2) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described under small purchase procedures for delivery within a country in which there is U.S.-owned foreign currency shall be limited to be the local trade area of that country; and, to the extent feasible within the criteria in 225.7606, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

225.7603 Evaluating offers.

(a) *Conversion for evaluation purposes.* For purposes of evaluation, offers expressed in whole or in part in

U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

(b) *Excess foreign currency offers.* Subject to (d) below and to the award limitations in 225.7604, reference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(1) The lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(2) When the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(3) When the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(4) When responsive offers in comb nations described in (2) and (3) abov are received, the lowest offer evaluated under (2) above.

(5) When responsive offers are received in U.S. dollars only, the lowes such offer. If equal low offers are received and one or more contain a U.S dollar content, that offer which contains the greatest U.S. dollar conten shall be preferred.

(c) *Near-excess foreign currency offers.* The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

(d) *Consideration of combination offers.* When responsive offers received include some which are priced only in U.S. dollars and others in combinations of U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S dollars only.

(e) *Evaluation table.* The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

EVALUATION TABLE

Offers received are priced in U.S dollars and "X" Country's rupees. Applicable exchange rate assumed for this table is 3 rupees equal 1 dollar.

Offers	In excess currency only	In combination excess currency—U.S dollars	In U.S dollars only	In U.S dollars as converted (see 25.7603(a))	U.S dollars content	Preference	
						For award	See foot-note
1	36OR			$120	0	1	3
2		60R + $80		($20 + $80) $100	0	6	4
3		18R + $95		($6 + $95) $101	0	None	4
4		60R + $90		($20 + $90) $110	0	7	4
5			$94	$94	0	9	5
6	45OR			$150	$50	2	3

Offers	In excess currency only	In combination excess currency—U.S. dollars	In U.S. dollars only	In U.S. dollars as converted (see 25.7603(a).)	U.S. dollars content	Preference	
						For award	See footnote
7		60R + $90		($20 + $90) $110	$90	4	4
8			$94	$94	$50	6	5
9	450R			$150	0	3	3
10		60R + $80		($20 + $80) $100	$50	5	4

Notes to Evaluation Table:

1. All offers are assumed to be responsive.

2. The lowest offer in U.S. dollars only is $94. Therefore, $141 ($94.00 plus $47) is the maximum amount for which the
contracting officer has authority to award without referral under 225.7604(b).

3. Offers 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer 1, being the lowest, is
preferred for award. In the absence of Offer 1, Offer 6 would be preferred because it contains a U.S. dollar content of $50. In
the absence of Offers 1 and 6, Offer 9 would be preferred. In accepting Offer 1, 6, or 9, the DoD Appropriation would be
charged $94 (see 225.7604(a)). Before Offer 6 or 9 could be accepted, they would require referral under 225.7604(b).

4. Offers 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers 1, 6, and 9, or
in the absence of Offer 1 and in case Offers 6 and 9 were not approved by higher authority after referral under 225.7604(b).
Offer 7 would be preferred over Offers 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S.
dollars is limited to that content. In the absence of Offer 7, Offer 10 would be preferred over Offers 2, 3, and 4 because it
contains a U.S. dollar content of $50, and, although the part to be paid in U.S. dollars is more than that content, it would result
in the least expenditure of U.S. dollars. In the absence of Offers 7 and 10, Offer 2 would be preferred over Offers 3 and 4
because it would result in the least expenditure of United States dollars. In the absence of Offers 2, 7, and 10, Offer 4 would
be preferred. Offer 3 could not be considered for award because the U.S. dollar amount ($95) exceeds the lowest offer in U.S.
dollars ($94) (see 225.7603(d)).

5. Offers 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the
absence of all other offers except 6 and 9 and in case those offers were not approved by higher authority after referral under
225.7604(b). Offer 8 would be preferred to Offer 5 because it contains a U.S. dollar content of $50.

225.7604 Awards.

(a) *Basis.* Award shall be made in accordance with (b) and (c) below. When unreasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-DoD users of the same or similar items exists, the proposed acquisition shall be referred to higher authority.

(b) *Awards by the contracting officer.* The contracting officer shall have authority to award contracts as follows:

(1) To the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50% and the lowest responsive offer in U.S. dollars does not exceed $50,000; (Note: The cost to the DoD Appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(2) To the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(3) To the offeror submitting the lowest responsive offer entirely in U.S. dollars; Provided, That payment in U.S. dollars is authorized under 225.7606.

(c) *Awards requiring approval by higher authority.* (1) The contracting officer shall refer the proposed acquisition to the appropriate official listed in (3) below when:

(i) The lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than 50%, regardless of the U.S. dollar cost of the contract;

(ii) The lowest responsive U.S. dollar offer exceeds $50,000; or

(iii) The lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(2) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(3) The Secretaries of the Military Departments, the Assistant Secretary of Defense (Acquisition and Logistics), the Directors of Defense Agencies, and

the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

225.7605 Determinations of nonfeasibility and contract certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 225.7606 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

CONTRACT CERTIFICATION

I hereby certify that it is not feasible to make payment under this contract in the country of ________ in the amount of $____ from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature) ____________________

(Typed Name and Title of Contracting Officer) ________________

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with Departmental instructions.

225.7606 Criteria for nonfeasibility determinations.

The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(a) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.

(b) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty, executive agreement, or law o the country concerned requires payments to be made in U.S. dollars.

(c) Responsive offers require payment in U.S. dollars in whole or i part.

(d) The only responsive offers received require payment entirely in U.S. dollars.

(e) The acquisition is for a compelling need of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(f) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in United States dollars has been authorized by the proper authority under 225.7604(c)(3).

225.7608 Contracts with domestic concerns.

The clause in 252.225-7021, Acquisition and Use of Excess and Near-Excess Currency, shall be included in any contract with a domestic concern when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

Subpart 225.77—Procurements Involving Work To Be Performed in Foreign Countries by United States Contractors

225.7700 Scope of subpart.

This subpart provides policy and procedure regarding procurements involving work to be performed in foreign countries by United States contractors.

225.7701 Policy.

When a contract which requires work to be performed in a foreign country by personnel of the United States or third country national contractor is contemplated by a purchasing activity not within the command jurisdiction of the unified or specified command involved, coordination shall be effected with the appropriate senior component commander in the country involved. In the event there is no such component command in the country, or the procurement does not pertain to a component command, this action shall be effected through either the unified commander, the unified command representative, or the designated commanding officer of the unified command for that country. Such coordination shall be effected as early as possible, preferably prior to the issuance of the solicitation, but in any event prior to award of a contract. When such coordination is initiated prior to, or at the time of solicitation, the notification should include a copy of the solicitation, and as much of the information listed in (b) as is then available.

225.7702 Procedures.

(a) The contracting officer shall request the following information from the overseas Commander:

(1) The applicability of any international agreements to the requirement being procured;

(2) Security requirements applicable to the area concerned;

(3) Standards of conduct required to be observed by the prospective contractor and his employees, and any action that may be taken against them in the event required standards are not maintained; and

(4) Requirements pertaining to the use of foreign currencies, including applicability of United States holdings of excess foreign currencies.

(b) The contracting officer shall furnish the overseas Commander the following information prior to any contract performance:

(1) Any contractor logistical support desired in support of US or FMS requirements;

(2) Contract performance period and estimated contract value;

(3) Number and nationality of contractor employees and date of planned arrival of contractor personnel;

(4) Contract security requirements; and

(5) Other pertinent information to effect complete coordination and cooperation.

(c) Approvals and documentation of the contract file shall be as indicated in 225.870.

(d) In accordance with 229.402-70, the contracting officer shall, at the time of negotiation of a contract that is to be performed in a country or area listed in 229.101-10(c), obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law.

Subpart 225.79—North Atlantic Treaty Organization (NATO) Cooperative Projects

SOURCE: 53 FR 38180, Sept. 29, 1988, unless otherwise noted.

225.7900 Scope of subpart.

This subpart provides guidance on contractual implementation of NATO cooperative projects entered into under the authority of section 115 of the International Security and Development Cooperation Act of 1985 (Pub. L. 99-83) which amends the Arms Export Control Act, 22 U.S.C. 2751 et seq., and section 1102 of the Department of Defense Authorization Act (Pub. L. 99-145) which adds section 2407 to Title 10, U.S.C.

225.7901 Definitions.

"Cooperative project" means a jointly managed arrangement, described in a written agreement among the parties, which is undertaken in order to further the objectives of standardization, rationalization, and interoperability of the armed forces of North Atlantic Treaty Organization member countries and which provides for:

(a) One or more of the other participants to share with the United States the cost of research and development, testing, evaluation, or joint production (including follow-on support) of certain defense articles;

(b) Concurrent production in the United States and in another member country of a defense article jointly developed in accordance with paragraph (a) of this section; or

(c) Procurement by the United States of a defense article or defense service from another member country.

The term "other participant" means a participant in a cooperative project other than the United States.

225.7902 General.

(a) *Cooperative Project Authority.* (1) DoD Components which have been delegated authority to do so may enter into a cooperative project agreement with the North Atlantic Treaty Organization (NATO) or with one or more member countries of that organization in accordance with DoD Directive 5530.3, "International Agreements".

(2) In implementing cooperative project agreements, DoD Components may enter into contracts or incur other obligations on behalf of other participants without charge to any appropriation or contract authorization, in accordance with laws and regulations governing the negotiation of such cooperative project agreements.

(b) *Contracts Implementing Cooperative Projects.* Heads of DoD Components are delegated authority to contract in implementation of cooperative projects, subject to the approvals specified in 225.7904. When contracting in support of cooperative project agreements, certain statutory requirements which relate to the formation of contracts and to contractual terms and conditions may be waived on a case-by-case basis.

225.7903 Policy.

Except to the extent waived under this subpart, contracts implementing cooperative projects will comply with all applicable laws relating to procurement. In addition, all such contracts will be entered into and administered in accordance with normal acquisition and contract administration procedures set forth in the FAR, this supplement and other applicable directives. Waivers of certain procurement laws and regulations, however, may be obtained when required by the terms of a written cooperative project agreement and when approved by the appropriate DoD officials based upon a determination that the waiver is necessary to ensure that the cooperative project will significantly further NATO standardization, rationalization, and interoperability.

225.7904 Procedures.

(a) *Directed Subcontracting.* In order to implement work sharing arrangements in cooperative project assignments, the Assistant Secretary of Defense for Production and Logistics (ASD(P&L)) may authorize the direct placement of subcontracts with particular subcontractors. Directed subcontracting is not authorized unless specifically addressed in the cooperative project agreement negotiated as described in 225.7902. In some instances it may not be feasible to name specific subcontractors at the time of conclusion of the agreement but the general provisions for work sharing at the prime and subcontractor level have to be clearly delineated in the agreement in order to provide the necessary authority to carry out such arrangement during the acquisition phase. The agreement itself will provide the necessary authority for inclusion of a contractual provision requiring the prime contractor to place certain subcontracts with particular subcontractors. No separate justification and approval during the acquisition process is required.

(b) *Statutory Waivers.* (1) In implementation of cooperative projects, the Deputy Secretary of Defense may waive with respect to contracts or subcontracts placed outside the United States any provision of law that specifically—

(i) Prescribes procedures to be followed in the formation of contracts;

(ii) Prescribes terms and conditions to be included in contracts;

(iii) Prescribes requirements for or preferences to be given to goods grown, produced, or manufactured in the United States or in United States Government-owned facilities or for services to be performed in the United States; or

(iv) Prescribes requirements regulating the performance of contracts.

(2) There is no authority for waivers of—

(i) Any provision of the Arms Export Control Act (22 U.S.C. 2751);

(ii) Any provision of 10 U.S.C. 2304

(iii) The cargo preference laws of the United States, including the Military Cargo Preference Act of 1904 (10 U.S.C. 2631) and the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)); or

(iv) Any of the financial management responsibilities administered by the Secretary of the Treasury.

(3) If any such waiver is contemplated under the terms of a cooperative project agreement, a request for the waiver will be forwarded to the Deputy Secretary of Defense through the ASD(P&L). The waiver request must be accompanied by a Determination and Findings for signature by the Deputy Secretary of Defense establishing that the waiver is necessary to further NATO standardization, rationalization, and interoperability significantly. The approval of the Deputy Secretary of Defense must be obtained prior to a commitment to make such waivers in an agreement of an amendment to such agreement or contract.

225.7905 Disposal of Property.

Property which is jointly acquired by the members of a cooperative project will be disposed in accordance with the procedures established in the agreement or in a manner consistent with the terms of the agreement. (See also 245.603-71.)

225.7906 Reports.

Congressional Notification of Designations of Particular Prime Contractors or Subcontractors for Cooperative Projects.

(a) Congressional notification is required whenever there is a DOD determination to award a prime or subcontract to a particular contractor if this determination was not part of the certification made under Section 27(f) of the Arms Export Control Act prior to finalization of a cooperative agreement. DoD Components will provide a proposed Congressional notice including the reason for use of the authority to designate a particular contractor or subcontractor to the ASD(P&L) in sufficient time to forward to Congress prior to the time of contract award.

(b) Congressional notification is also required each time a statutory waiver in accordance with 225.7904(b) is exercised if such information was not provided in the certification to Congress prior to finalization of the cooperative agreement. Exercise of the waiver means a contract award or modification which provides for a statutory exception.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

Subpart 226.70—Contracting with Historically Black Colleges and Universities or Minority Institutions

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD Far Supplement 201.301.

SOURCE: 53 FR 5126, Feb. 19, 1988 and 53 FR 20630, June 6, 1988, unless otherwise noted.

Subpart 226.70—Contracting with Historically Black Colleges and Universities or Minority Institutions

226.7001 Scope of subpart.

This subpart implements certain provisions of section 1207 of Pub. L. 99-661, Section 806 of Pub. L. 100-180, and Section 831 of Pub. L. 101-189, which establish for DoD an objective of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987-93 to Historically Black Colleges and Universities (HBCUs), Minority Institutions (MIs), and to Small Disadvantaged Business (SDB) Concerns (see 219.201). Section 1207 also provided certain discretionary authority to the Secretary of Defense for achievement of that objective.

[53 FR 5126, Feb. 19, 1988 and 53 FR 20630, June 6, 1988, as amended at 55 FR 19079, May 8, 1990]

226.7002 Definitions.

Historically Black Colleges and Universities (HBCUs) means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Minority Institutions (MIs) means institutions meeting the requirements prescribed by the Secretary of Education at 34 CFR 607.2. The term also includes any nonprofit research institution that was an integral part of an Historically Black College or University before November 14, 1986.

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988]

226.7003 General policy.

In furtherance of the Government policy of placing a fair proportion of its acquisitions with HBCUs, MIs and SDBs, section 1207 of Pub. L. 99-661, section 806 of Pub. L. 100-180, and Section 831 of Pub. L. 101-189 established an objective for the Department of Defense of awarding a combined total of five percent of its total contract dollars during each of fiscal years 1987-93 to HBCUs, MIs and SDBs (see 219.201) and of maximizing the number of such entities participating in Defense prime contracts and subcontracts. Executive Order 12320 also contains additional guidance concerning HBCUs. It is the policy of the Department of Defense to strive to meet these objectives through the enhanced use of outreach efforts, technical assistance programs, and the special authorities conveyed by these laws (e.g., through a total set-aside for HBCUs and MIs to acquire research and studies normally acquired from Higher Education Institutions (HEIs). (For reporting requirements see 219.202-5.) With regard to technical assistance programs, it is the Department's policy to provide HBCUs and MIs technical assistance, to include information about the Department's HBCU and MI Program, advice about acquisition procedures, instructions on preparation of proposals, and such other assistance as is consistent with the Department's mission. In the event an HBCU or MI submits an offer under an unrestricted acquisition that offers an evaluation preference for SDBs, the HBCU or MI offer shall be evaluated as if it had been submitted by an SDB concern (see 252.219-7007(d)).

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 54 FR 31039, July 26, 1989; 55 FR 19079, May 8, 1990]

226.7004 Set-asides for historically black colleges and universities and minority institutions.

(a) Except for acquisitions made using simplified small purchase procedures or Broad Agency Announcement procedures (but see 235.016-70), the entire amount of an individual acquisition for research, studies, or services normally acquired from HEIs shall be set aside for exclusive participation by HBCUs and MIs if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible HBCUs/MIs who can comply with the limitations on subcontracting in the clause at 252.226-7000(d), (2) award will be made at a price not exceeding fair market price (see FAR 19.806-2) by more than 10 percent, and (3) scientific and/or technological talent consistent with the demands of the acquisition will be obtained through use of a total HBCU/MI set-aside. (See FAR 35.007 with regard to technical qualifications of sources for R&D acquisitions.)

(b) If it is necessary to obtain information in accordance with paragraph (a) above, the contracting officer may include a notice in the synopsis indicating that the acquisition may be set-aside for exclusive HBCU/MI participation if sufficient HBCU/MI sources are identified prior to issuance of the solicitation (see 205.207(d) (S-74)). The notice at 205.207(d) (S-74) encourages such entities to make their interest and capabilities known as expeditiously as possible.

(c) If prior to synopsis, a decision has been made to set-aside the acquisition for HBCUs and MIs, the synopsis shall so indicate (see 205.207(d) (S-75)). Similarly, if discrete or severable areas of research interest contained in a Broad Agency Announcement have been set-aside for HBCUs and MIs, the synopsis shall so indicate (see 205.207(d) (S-76)). In this regard, section 806 of Pub. L. 100-180 requires that a procurement which is likely to be set-aside for HBCUs/MIs be designated as such before a solicitation is issued, to the maximum extent practicable.

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988; 54 FR 26207, June 22, 1989]

226.7005 Methods of conducting set-asides.

Set-Asides for HBCUs/MIs will normally be conducted by using competitive proposals (see FAR 35.006; also see 235.016-70 regarding partially setting aside acquisitions when using Broad Agency Announcement procedures).

226.7006 Eligibility of offeror.

(a) To be eligible for award under the preference procedures of this subpart, an offeror must, at time of submission of its offer and contract award, be an HBCU or an MI as defined at 225.7002 and provide the contracting officer with evidence of such status upon request (see paragraph (c) of the clause at 252.226-7000). A list of HBCUs is published periodically by the Department of Education and may be obtained from the contracting activity's SADBU. The contracting officer's determination of eligibility shall be final.

(b) The contracting officer shall accept an offeror's certification under the provision at 252.226-7001 that it is an HBCU/MI unless another offeror challenges the offeror's status or the contracting officer has reason to question that status.

[53 FR 5126, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988]

226.7007 Protesting HBCU or MI status

Any offeror or other interested party may, in connection with a contract involving an HBCU/MI set-aside or otherwise involving award to an HBCU or MI based on preferential consideration, challenge the HBCU or MI status of an offeror by filing a protest with the contracting officer following the procedures in FAR 33.103.

226.7008 Withdrawing or modifying set-asides.

HBCU/MI set-asides will not be withdrawn for reasons of price reasonableness unless the low responsive responsible offer exceeds the fair market price, as determined in FAR 19.806-2, by more than 10 percent. In such cases, the contracting officer shall initiate a withdrawal.

226.7009 Contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for total HBCU/MI set asides (see 226.7004):

(a) 252.226-7000, Notice of Total Set-Aside for Historically Black Colleges and Universities/Minority Institutions.

(b) 252.226-7001, Historically Black Colleges and Universities/Minority Insitutions Certification.

[53 FR 20630, June 6, 1988]

226.7010 Goals and incentives for subcontracting with HBCUs and MIs.

Consistent with section 806(b)(2) of Pub. L. 100-180, contracting officers shall ensure that contractors required to submit subcontracting plans under the clause at FAR 52.219-9, also establish goals for subcontract awards to HBCUs and MIs. (See 219.704(a)(1) for procedures.) The clause at 252.219-7009 also provides financial incentives for subcontract awards to such entities.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 227—PATENTS, DATA, AND COPYRIGHTS

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46225, Dec. 23, 1986, unless otherwise noted.

Subpart 227.3—Patent Rights Under Government Contracts

227.303 Contract clauses.

(a)(70) Pursuant to FAR 27.304-1(e), the contracting officer shall insert the clause at 252.227-7039 in solicitations and contracts containing the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form).

[55 FR 19079, May 8, 1990]

227.304-1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR 27.304-1(d)(ii)) may be submitted on DD Form 882.

227.304-4 Subcontracts.

The contracting officer shall insert the clause at 252.227-7034, Patents-Subcontracts, in solicitations and contracts containing the clause at FAR 52.227-11, Patent Rights-Retention by the Contractor (Short Form).

Subpart 227.4—Technical Data, Other Data, Computer Software, and Copyrights

SOURCE: 53 FR 43699, Oct. 28, 1988, unless otherwise noted.

227.470 Scope.

This subpart sets forth the Department of Defense policies and procedures relating to the acquisition of technical data and computer software as well as rights in technical data, other data, computer software, and copyrights. This part does not apply to rights in computer software acquired under GSA schedule contracts.

227.471 Definitions.

Commercial computer software, as used in this subpart, means computer software which is used regularly for other than Government purposes and is sold , licensed, or leased in significant quantities to the general public at established market or catalog prices.

Computer, as used in this subpart, means a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

Computer data base, as used in this subpart, means a collection of data in a form capable of being processed and operated on by a computer.

Computer program, as used in this subpart, means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

Computer software, as used in this subpart, means computer programs and computer data bases.

Computer software documentation, as used in this subpart, means technical data, including computer listings and printouts, in human-readable form which (a) documents the design or details of computer software, (b) explains the capabilities of the software, or (c) provides operating instructions for using the software to obtain desired results from a computer.

Data, as used in this subpart, means recorded information, regardless of form or method of the recording.

Detailed design data, and used in this subpart, means technical data that describes the physical configuration and performance characteristics of an item or component in sufficient detail to ensure that in item or component produced in accordance with the technical data will be essentially identical to the original item or component.

Detailed manufacturing or process data, as used in this subpart, means technical data that describes the steps, sequences, and conditions of manufacturing, processing or assembly used by the manufacturer to produce an item or component or to perform a process.

Developed, as used in this subpart, means that the item, component, or process exists and is workable. Thus, the item or component must have been constructed or the process practiced. Workability is generally established when the item, component or process has been analyzed or tested sufficiently to demonstrate to reasonable people skilled in the applicable art that there is a high probability that it will operate as intended. Whether, how much, and what type of analysis or testing is required to establish workability depends on the nature of the item, component, or process, and the state of the art. To be considered "developed", the item, component, or process need not be at the stage where it could be offered for sale or sold on the commercial market, nor must the item, component or process be actually reduced to practice within the meaning of title 35 of the United States Code.

Developed Exclusively with Government Funds as used in this subpart, means, in connection with an item, component, or process, that the cost of development was paid for in whole by the Government or that the development was required for the performance of a Government contract or subcontract.

Developed Exclusively at Private Expense, as used in this subpart, means, in connection with an item, component, or process, that no part of the cost of development was paid for by the Government and that the development was not required for the performance of a Government contract or subcontract. Independent research and development and bid and proposal costs, as defined in FAR 31.205-18 (whether or not included in a formal independent research and development program), are considered to be at private expense. All other indirect costs of development are considered Government funded when development was required for the performance of a Government contract or subcontract. Indirect costs are considered funded at private expense when development was not required for the performance of a Government contract or subcontract.

Form, fit, and function data, as used in this subpart, means technical data that describes the required overall physical, functional, and performance characteristics (along with the qualification requirements, if applicable) of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items.

Government purpose license rights (GPLR), as used in this subpart, means, rights to use, duplicate, or disclose data (and in the SBIR Program, computer software), in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. Government purposes include competitive procurement, but do not include the right to have or permit others to use technical data (and in the SBIR Program, computer software) for commercial purposes.

Limited rights, as used in this subpart, means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party asserting limited rights, be: released or disclosed outside the Government; used by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software; or used by a party other than the Government, except that the Government may release or disclose technical data to persons outside the Government, or permit the use of technical data by such persons, if—

(a) Such release, disclosure, or use—

(i) Is necessary for emergency repair and overhaul; or

(ii) Is a release or disclosure of technical data (other than detailed manufacturing or process data) to, or use of such data by, a foreign government that is in the interest of the Government and is required for evaluational or informational purposes;

(b) Such release, disclosure, or use is made subject to a prohibition that the person to whom the data is released or disclosed may not further release, disclose, or use such data; and

(c) The contractor or subcontractor asserting the restriction is notified of such release, disclosure, or use.

Required for the Performance of a Government Contract or Subcontract, as used in this subpart, means, in connection with the development of an item, component, or process, that the development was specified in a Government contract or subcontract or that the development was accomplished during and was necessary for performance of a Government contract or subcontract.

Restricted rights, as used in this subpart, means rights that apply only to computer software, and include, as a minimum, the right to—

(a) Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(b) Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(c) Copy computer programs for safekeeping (archives) or backup purposes; and

(d) Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, restricted rights include any other specific rights not inconsistent with the minimum rights in (a) through (d) above that are listed or described in a contract or described in a license agreement made a part of a contract.

Technical data, as used in this subpart, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). The term does not include computer software or data incidental to contract administration, such as financial and/or management information.

Unlimited rights, as used in this subpart, means rights to use, duplicate, release, or disclose, technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Unpublished, as used in this subpart, means that technical data or computer software has not been released to the public or furnished to others without restriction on further use or disclosure. Delivery of other than unlimited rights technical data or computer software to or for the Government under a contract does not, in itself, constitute release to the public.

[53 FR 43699, Oct. 28, 1988; 53 FR 50416, Dec. 15, 1988]

227.472 Acquisition Policy for Technical Data and Rights in Technical Data.

227.472-1 General.

The acquisition of technical data and the rights to use that data requires a balancing of competing interests.

(a) *The Government's Interests.* The Government has extensive needs for many kinds of technical data and the rights to use such data. Its needs may exceed those of private commercial customers. Millions of separate items must be acquired, operated and maintained for defense purposes often at points remote from the source of supply. Technical data are required for training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging and logistics operations. Technical data resulting from research and development and production contracts must be disseminated to many different users. The Government must make technical data widely available to increase competition, lower costs and provide for mobilization. Finally, the Government has an interest in encouraging contractors to develop new technologies and to improve existing technologies to satisfy Government and commercial needs. To encourage contractors and subcontractors to expend resources in developing applications of these technologies, it may be appropriate to allow them to exclusively exploit the technology.

(b) *The Contractor's Interests.* Commercial and nonprofit organizations have property rights and economic interests in technical data. Technical data are often closely held in the commercial sector because their disclosure to competitors could jeopardize the contractor's competitive advantage. Public disclosure can cause serious economic hardship to the originating company.

(c) *The Balancing of Interests.* (1) The Government's need for technical data and a contractor's economic interest in it do not necessarily coincide. However, they may coincide. This is true in the case of innovative contractors who can best be encouraged to develop items of military usefulness when their rights in such items are scrupulously protected.

(2) The Government needs to encourage delivery of data essential for military needs, even though that data would not customarily be disclosed in commercial practice. When the Government pays for research and development, it has an obligation to foster technological progress through wide dissemination of the information and, where practicable, to provide competitive opportunities for other interested parties.

(3) Acquiring, maintaining, storing, retrieving, protecting and distributing technical data are costly and burdensome for the Government. Therefore, it is necessary to avoid acquisition of unnecessary technical data.

(d) *Identification of Technical Data Rights.* The Department of Defense is required by 10 U.S.C. 2320 to recognize and protect contractor rights in technical data and to negotiate rights in technical data resulting from mixed private and Government funded development and, under 10 U.S.C. 2321, to perform a thorough review of all restrictions on its right to use or disclose technical data. For these reasons, it is necessary that all contractor and subcontractor assertions of rights be identified in the contract as early in the acquisition process as possible but no later than delivery of the technical data to the Government (see 227.473-1).

[53 FR 43699, Oct. 28, 1988; 53 FR 50416, Dec. 15, 1988]

227.472-2 Establishing Minimum Government Needs.

(a) *General.* The Department of Defense shall obtain only the minimum essential technical data and data rights. In establishing the minimum Government needs, the following factors shall be considered; whether the item, component, or process will be competitively acquired; whether repair and overhaul work will be contracted out; whether the repair or replacement parts will be commercial items or whether the item will be acquired by form, fit and function data, performance specifications, or by detailed design data. In deciding how to acquire data and data rights, the Department of Defense will use the least intrusive procedures in order to protect the contractor's economic interests (see Subpart 217.72). DoD Directive 5010.12, DoD Data Management Program, sets forth policies and procedures to be followed in acquiring technical data.

(b) *Commercial Items.* It is DoD policy to encourage the use of commercial items to the maximum practicable extent (see 210.002 (S-70)). To further this policy, it is DoD policy to limit acquisition of technical data and rights in technical data pertaining to commercial items developed at private expense; neither data nor data rights should be acquired for the competitive acquisition of such a commercial item. Therefore for such commercial items, the DoD will normally only obtain technical data and data rights as provided in 10 U.S.C. 2320(a)(2) (C) and (D) (see 227.472-3(a)(1)), such as those needed for operation, maintenance, installation, and training. Additional technical data may not be acquired unless approved by the chief of the contracting office, and greater data rights may not be acquired unless approved by the head of the contracting activity.

227.472-3 Rights in technical data.

There are three basic types of rights which apply to technical data delivered under contract to the Government. These are unlimited rights, limited rights, and Government purpose license rights. The Government is entitled to unlimited rights in technical data as enumerated in (a)(1) below. The Government will obtain limited rights as discussed in (b)(1) below. Government purpose license rights may be established in accordance with (a)(2), (b)(2), or (c) below.

(a) *Unlimited rights.* (1) The Government is entitled to and, except as provided in paragraph (a)(2), will receive unlimited rights in—

(i) Technical data pertaining to items, components, or processes which have been or will be developed exclusively with Government funds;

(ii) Technical data resulting directly from performance of experimental, developmental, or research work specified as an element of performance under Government contract or subcontract;

(iii) Form, fit, and function data pertaining to items, components, or processes prepared or required to be delivered under any Government contract or subcontract;

(iv) Manuals or instructional materials (other than detailed manufacturing or process data and commercial computer software documentation) prepared or required to be delivered under any Government contract or subcontract necessary for installation, operation, maintenance, or training purposes;

(v) Technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) Technical data, which are otherwise publicly available, or have been released or disclosed by the contractor or subcontractor, without restriction on further release or disclosure;

(vii) Technical data in which the Government has obtained unlimited rights as a result of negotiations; and

(viii) Technical data previously delivered subject to limited rights or Government purposes license rights which have expired.

(2) *Exception to Unlimited Rights—Government Purpose License Rights.* (i) To encourage commercial utilization of technologies developed under Government contracts, the Government may agree to accept technical data subject to Government purpose license rights (GPLR). The Government shall retain the royalty-free right to use, duplicate, and disclose data for Government purposes only and to permit others to do so for Government purposes only for a stated period of time. After the time priod has elapsed, the GPLR will expire and the Government will be entitled to unlimited rights.

(ii) The contracting officer should not agree to accept GPLR when—

(A) Technical data are likely to be used for competitive procurement involving large numbers of potential competitors, for items such as spares; and

(B) Technical data must be published (e.g., to disclose the results of research and development efforts).

(b) *Limited rights.* (1) Except as provided in paragraph (b)(2), the Government will obtain limited rights in unpublished technical data pertaining to items, components, or processes developed exclusively at private expense, provided the data are properly marked with the limited rights legend and, provided they are not technical data described in paragraph (a) above.

(2) *Exception to Limited Rights—Obtaining Greater Rights in Technical Data.* (i) If the Government needs data rights pertaining to items, components, or processes developed exclusively at private expense to develop alternative sources, the contracting officer may negotiate with the contractor or subcontractor to acquire additional rights and technical assistance, where appropriate. Before acquiring additional rights, the contracting officer should consider alternatives, such as—

(A) Developing alternate items, components, or processes; or

(B) Obtaining a commitment by the contractor or subcontractor to qualify additional sources.

(ii) Greater rights in technical data may be obtained by negotiation of a lump sum fee, royalty, GPLR or other arrangement. Any greater rights shall be stated as a separate contract line item. The contracting officer shall not acquire any greater rights unless—

(A) There is a need for disclosure outside the Government; and

(B) If the specific rights are required for competitive procurement, the anticipated savings from competition are likely to exceed the acquisition cost of the technical data and the rights therein.

(c) *Rights in Technical Data Pertaining to Items, Components, and Processes Developed with Mixed Funding.* As required by 10 U.S.C. 2320, the contracting officer will negotiate rights in technical data associated with an item, component, or process developed in part with Government funds and in part at private expense (mixed funding) whenever a contractor provides the notice contained in 252.227-7013(j) with respect to such data. Absent the notice, the Government shall have unlimited rights in the technical data and shall have met the obligation to negotiate. Negotiations shall begin at the earliest possible time and the results shall be incorporated into the contract, preferably at time of award, but in any event before delivery of the data.

[53 FR 43699, Oct. 28, 1988; 53 FR 50416, Dec. 15, 1988]

227.473 General procedures.

227.473-1 Procedures for establishing rights in technical data.

(a) *Notification requirements.*—(1) *Background.* Offerors and contractors are required by 252.227-7013(j) to notify the Government of any asserted restrictions on the Government's right to use or disclose technical data or computer software. This notice advises the contracting officer of the contractor's or any subcontractor's intended use of items, components, processes, or computer software that—

(i) Have been developed exclusively at private expense;

(ii) Have been developed in part at private expense; or

(iii) Embody technology developed exclusively with Government funds for which the contractor or subcontractor requests the Government to grant exclusive commercial rights. Items, components, or processes do not need to be identified if no technical data is required to be delivered or if the required technical data will be delivered with unlimited rights.

(2) *Preaward Notification.* (i) The offeror is required to identify, in its proposal, items, components, processes or computer software which it intends to use and which would result in delivery of technical data to the Government with other than unlimited rights. The notification must be accompanied by the representation described in (a)(5) below.

(ii) After receipt of the offerors' proposals, the Government must determine if the offerors submitted the information required by 252.227-7013(j). Failure to submit should initially be treated as a correctable, minor irregularity (see FAR 15.607). However, if an offeror refuses to submit the information, then the offer may be deemed to be unacceptable.

(iii) The information provided by the offeror may also be used in the source selection process (e.g., life cycle cost analyses). However, in no event may an offer be found unacceptable, for purposes of contract award, solely because the offeror refuses to sell or otherwise relinquish to the Government rights in technical data to which the offeror is otherwise entitled under applicable law or regulation (see 227.473-2(b)).

(3) *Contract award.* (i) The contractor's notification will serve as the basis for the list to be included in the contract identifying all technical data with restrictions on the Government's right of use or disclosure that is required by paragraph (k) of the clause at 252.227-7013.

(ii) During the life of the contract this list will be updated as needed to address additional assertions by the contractor or subcontractors under the notification process, to incorporate the results of Government reviews and challenges, and to specifically identify or describe all technical data to be delivered with restrictions on the Government's rights of use or disclosure. Also, during contract performance changing conditions may require bilateral modification of the list.

(iii) The purpose of the list is to facilitate the review of contractor assertions required by 10 U.S.C. 2321 and to provide a basis for Government acquisition planning. It is not a final determination of rights and does not alter the rights of the parties under 10 U.S.C. 2320 or 2321.

(4) *Postaward notification.* Because it may be impracticable to identify all items, components, processes or computer software that would result in delivery to the Government of technical data with other than unlimited rights prior to contract award, paragraph (j) of the clause at 252.227-7013 requires the contractor to continue the notification process during performance of the contract by notifying the contracting officer prior to committing to the use of the privately developed item, component, process or computer software. This notification must be accompanied by the representation described in (a)(5) below.

(5) *Representations.* (i) If pursuant to the preaward or postaward notification procedures the offeror/contractor notifies the Government that technical data or computer software may be delivered with other than unlimited rights, then the notice must be accompanied by the representation at 252.227-7013(j).

(A) This clause authorizes the contracting officer to request additional information needed to evaluate the assertions.

(B) This representation assists the parties to negotiate rights in technical data and computer software to be delivered to the Government with other than unlimited rights, but does not alter the rights of the parties which are contained in the clause at 252.227-7037.

(ii) If delivery of technical data is expected under a resultant negotiated contract, the provision at 252.227-7028, Requirement for Technical Data Representation, shall be included in the solicitation. The provision requires the contractor to provide the following:

(A) Identification of an existing contract or subcontract under which the technical data were delivered or will be delivered, and the place of delivery; and

(B) Identification of any limitation on the Government's right to use the data, including identification of the earliest expiration date for the limitation.

(6) *Supporting information.* The contracting officer should rely on the representation provided with the contractor's notification. Detailed supporting information, either preaward or postaward, should normally not be requested unless there are reasonable grounds to question the validity of the assertion. While the contractor or subcontractor is obligated to provide sufficient information to fully justify the assertions, the contracting officer should only obtain enough information to determine if the assertion is reasonable and to evaluate its likely impact on the Government.

(b) *Establishing rights in technical data.* (1) If the offeror or the contractor is asserting limited rights in the technical data, the contracting officer shall include the item, component or process in the list in the contract described at 252.227-7013(k), unless there are grounds to question the validity of the assertion. If appropriate, the procedures at 217.7201 will be followed and greater rights obtained pursuant to 227.472-3(b)(2). Still, the assertions are subject to Government review and possible challenge in accordance with 227.473-4 and 252.227-7037.

(2) If the offeror or contractor is requesting exclusive commercial rights in technical data that would otherwise be delivered to the Government with unlimited rights, the contracting officer should agree to permit the contractor to establish exclusive commercial rights pursuant to 227.472-3(a)(2), unless the Government's intended use of the data would make protection of the contractor's rights unduly burdensome.

(i) Exclusive commercial rights may be accomplished by either deferring delivery or ordering of the technical data in accordance with 227.474-2 or by agreeing to accept the data with Government purpose license rights for a specified period of time in accordance with 227.472-3(a)(2).

(ii) The item, component, or process and the technical data will be identified in the list in the contract.

(3) If the offeror or contractor is asserting that the item, component, or process is developed with mixed funding, then the respective rights will be negotiated using the guidelines at paragraph (c) below and the results identified in the listing described at 252.227-7013(k).

(i) These negotiations will be conducted to the maximum practicable extent prior to contract award. However, if there are numerous offerors or under urgent circumstances, the contracting officer may determine that preaward negotiations are impracticable. This determination must be approved by the chief of the contracting office. The contracting officer will notify the contractor, stating that the contractor must notify the contracting officer if it elects to use the item, component or process. In that event, the contracting officer shall insert a provision in the contract providing procedures for subsequent negotiation of rights.

(ii) Data rights resulting from mixed funding need not be negotiated for small purchases or contracts awarded using sealed bidding.

(c) *Negotiation of Rights*—(1) *Negotiation Factors.* The contracting officer shall consider, as appropriate, the following factors when negotiating rights in technical data developed with mixed funding or when the Government negotiates to relinquish rights or to acquire greater rights:

(i) The acquisition strategy for the item or system (including logistics support);

(ii) Whether the item or system (or related logistics support) will be competed;

(iii) Timing of such competition;

(iv) The economic life of the technology and whether it can be commercialized;

(v) Funding contributions of the respective parties;

(vi) Development of alternative sources for industrial mobilization or other purposes;

(vii) Burden of protecting the contractor's rights in technical data; and

(viii) Other factors, such as unique contractor qualification or expertise contributing to the configuration management or development of the item, component or process.

(2) *Negotiation situations.* The following are examples of how the negotiation factors in (c)(1) above may be applied.

(i) When the Government does not anticipate an early need to use the data for competition and the contractor has requested exclusive rights in the data, the Government may negotiate to establish limited rights which, upon expiration of a time limitation, would become unlimited rights.

(ii) Where the Government requires early use of the data for competition, the contractor has requested exclusive commercial rights in the data, and protecting the contractor's rights is not unduly burdensome, the contracting officer may negotiate GPLR which would expire after a specified period of time and become unlimited rights.

(iii) Where the Government requires early use of the data for competition and the contractor has no interest in commercializing the data, the Government may negotiate to obtain unlimited rights or to establish another suitable arrangement that would satisfy the Government's needs.

(3) *Negotiation of Time Periods.* When time limitations for either GPLR or limited rights are negotiated, they shall be expressed in the contract as a date certain and should normally be no less than one year nor more than five years after the estimated date of first production delivery to the Government of the item, component, process, or computer software to which the technical data pertains.

(i) Time limitations for GPLR and limited rights greater than five years may be negotiated to provide the contractor a reasonable opportunity to recover its private investment, if:

(A) The technical data will not be needed for competition; and

(B) Longer periods are approved by the chief of the contracting office.

(ii) Time limitations for limited rights and GPLR may be extended; if

(A) Other interested parties have not requested access to the technical data;

(B) The technical data need not be publicly disclosed to meet a specified Government need; and

(C) The contractor provides adequate consideration for remarking any technical data with revised legends.

(4) *Non-Standard license rights.* Unlimited rights, Government purpose license rights, and limited rights and combinations of these rights (i.e., with time limitations) are considered standard license rights. All other license rights are considered non-standard license rights and shall not be negotiated in technical data resulting from mixed funding unless approved by the chief of the contracting office. Direct licensing arrangements are not considered non-standard license rights unless they involve delivery of technical data with non-standard rights.

(d) *Standard non-disclosure agreements.* (i) Technical data subject to other than unlimited rights shall not be released outside the Government unless the release is subject to a prohibition against further release, use, or disclosure. If the data are subject to GPLR, the recipient must sign the Standard Non-disclosure Agreement shown below. This Agreement must be executed by an official authorized to bind the contractor.

(ii) Nothing in this section impairs the rights of the developer of the data and third parties from independently entering into agreements concerning commercial uses of the data.

(iii) The contracting officer shall require each contractor receiving data subject to GPLR to execute the Standard Non-Disclosure Agreement before receipt of the data. If a contractor has previously signed an agreement, the earlier agreement may be provided.

Standard Non-disclosure Agreement

The undersigned (name), as the authorized representative of (company name) (hereinafter, "the licensee"), requests technical data subject to Government Purpose License Rights (hereinafter, "GPLR data") to compete for, perform, or to prepare to compete for, or to perform Government contracts. In consideration therefor:

(1) Licensee agrees that the GPLR data identified in this agreement shall be used only for Government purposes.

(2) Licensee agrees to provide written notice and a copy of the non-disclosure agreement to the contractor whose name appears in the GPLR legend (hereinafter referred to as the "contractor") whenever it receives GPLR data. The notification shall identify the GPLR data, the date and place of its receipt and the source from which the data was received.

(3) Licensee shall not, without prior written permission of the contractor, provide or disclose any GPLR data to any other company, person or entity, except its subcontractors. The licensee agrees not to disclose GPLR data to any subcontractor or potential subcontractor unless the subcontractor or potential subcontractor has executed the Standard Non-Disclosure Agreement.

(4) Licensee agrees not to use GPLR data for commercial purposes.

(5) Licensee agrees to adopt operating procedures and physical security measures designed to protect GPLR data from disclosure or release to unauthorized third parties.

(6) Licensee agrees to indemnify the Government, its agents and employees from all liability arising out of, or in any way related to, the misuse or unauthorized disclosure by the licensee, its employees or agents of any GPLR data it received. Licensee will hold the Government, its agents and employees, harmless against any claim or liability, including attorney fees, costs and expenses, arising out of the misuse or unauthorized disclosure of any GPLR supplied to the licensee hereunder.

(7) Execution of this non-disclosure agreement by the licensee or any of its authorized subcontractors is for the benefit of the contractor identified in the legend on any GPLR data received. Any such contractor is a third party beneficiary of this agreement who may have the right of direct action against the licensee to enforce the agreement or to seek damages which may result from any material breach of the agreement.

(8) This agreement shall be effective only for so long as the data remains unpublished (or until the GPLR legend expires).

Signed this ____ day of ________, 19____.

Licensee

(e) *Contract clause.* The contracting officer shall insert the basic data clause at 252.227-7013, Rights in Technical Data and Computer Software, in solicitations and contracts when technical data is specified to be delivered, or computer software may be originated, developed, or delivered, *provided* that such clause shall not be used in solicitations and contracts—

(1) When no data other than existing works are to be acquired in accordance with 227.477;

(2) When no data other than special works are to be acquired in accordance with 227.476;

(3) When the work will be performed by foreign sources in accordance with 227.475-5; and

(4) For architect-engineer services or construction in accordance with 227.478.

227.473-2 Prohibitions.

(a) In accordance with 10 U.S.C. 2320(a)(1), a contractor or subcontractor may not be prohibited from receiving from a third party a fee or royalty for the use of technical data pertaining to an item, component, or process developed exclusively at private expense by the contractor or subcontractor, except as otherwise specifically provided by law.

(b)(1) In accordance with 10 U.S.C. 2320(a)(2)(F), a contractor or a subcontractor (or a prospective contractor or subcontractor) may not be required, as a condition of being responsive to a solicitation or as a condition for the award of a contract or subcontract—

(i) To sell or otherwise relinquish to the United States any rights in technical data beyond those to which the Government is entitled under 10 U.S.C. 2320(a)(2) (C) and (D); or

(ii) To refrain from offering to use, or from using, an item, component, or process to which the contractor is entitled to restrict the Government's rights in technical data under 10 U.S.C. 2320(a)(2)(B).

(2) It is permissible to evaluate such factors as the impact on life cycle costs of limitations on the Government's ability to use or disclose the technical data. Further, nothing prohibits agreements which provide the Government with greater rights than it would otherwise be entitled to, for a fair and reasonable price (see 227.472-3(b)(2)).

(3) 10 U.S.C. 2305(d)(4) provides that, except where the Government is otherwise entitled to unlimited rights in technical data (see 227.472-3(a)), in solicitations for development or production of major systems, the contracting officer shall not require offers that would enable the Government to competitively reprocure identical items or components of the major system if the item or component was developed exclusively at private expense, unless the contracting officer determines that:

(i) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements; or

(ii) Proposals by the original supplier of the item or component to meet mobilization requirements are insufficient to meet the agency's mobilization needs.

[53 FR 43699, Oct. 28, 1988, as amended at 53 FR 51560, Dec. 22, 1988; 54 FR 20592, May 12, 1989]

227.473-3 Marking and identification requirements.

(a) *Clauses.* The contracting officer shall include the clauses at 252.227-7018 and 252.227-7029 in all contracts which also contain the clause at 252.227-7013. These clauses contain marking requirements for technical data and computer software and related procedures.

(b) *Contractor marking procedures.* The contractor's procedures required under the clause at 252.227-7018 shall be reviewed by the contract administration office and the contracting officer may withhold payments under the clause at 252.227-7030 for failure to establish, maintain and follow adequate marking procedures.

(c) *Unmarked technical data.* Technical data received with no restrictive markings are deemed to be furnished with unlimited rights. However, within six months after delivery of such data, the contractor may request permission to place restrictive markings on the data at its own expense. The contracting officer may approve the request if the contractor—

(1) Demonstrates that the omission was inadvertent;

(2) Establishes that the use of the markings is authorized; and

(3) Relieves the Government of liability with respect to the technical data.

(d) *Unjustified markings.* If the contracting officer believes that restrictive markings are not justified, the contracting officer will follow the procedures in 227.473-4 and the clause at 252.227-7037.

(e) *Non-Conforming Markings.* If technical data which the contractor is authorized by the contract to furnish with restrictive markings is received with non-conforming markings, the technical data shall be used according to the proper restriction, and the contractor shall be required to correct the markings to conform with the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings at the contractor's expense, notify the contractor in writing, and thereafter may use the technical data accordingly. Copyright notices, which conform to the requirement in 17 U.S.C. 401 and 402 are not considered restrictive markings.

227.473-4 Validation of restrictive markings on technical data.

(a) *General.* The clause at 252.227-7037 sets forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on deliverable technical data and shall be included in all solicitations and contracts which require the delivery of technical data. The Government should review the validity of any asserted restriction on technical data deliverable under a contract. This review should be accomplished before acceptance of the technical data, but no later than three years after final payment or three years after delivery of the technical data to the Government, whichever is later. The contracting officer may challenge restrictive markings if there are reasonable grounds to question their validity but only if the three-year period has not expired. However, the Government may challenge a restrictive marking at any time if the technical data (1) is publicly available; (2) has been furnished to the United States without restriction; or (3) has been otherwise made available without restriction. Only the contracting officer's final decision resolving a formal challenge constitutes "validation" as addressed in 10 U.S.C. 2321. A decision by the Government not to challenge a restrictive marking or asserted restriction does not constitute "validation".

(b) *Prechallenge request for information.* (1) Prior to making a written determination to challenge, the contracting officer must request the contractor or subcontractor to furnish information explaining the basis for any asserted restriction. If this information is incomplete, additional justification should be requested. The contracting officer should provide a reasonable time for submission of the required data.

(2) The contracting officer should request advice from the cognizant Government activity having interest in the validity of the markings.

(3) If the contracting officer, after reviewing all available information, determines that reasonable grounds exist to question the current validity of a restrictive marking, and that continued adherence to the marking would make subsequent competition impracticable or if the contractor or subcontractor fails to respond to the prechallenge request within a reasonable period, the contracting officer shall challenge the restriction following the procedures in the clause at 252.227-7037.

227.473-5 Remedies for noncomplying technical data.

(a) When data does not comply with the contract, the contracting officer should consider all remedies. These remedies include reduction of progress payments, withholding final payment, contract termination, and a reduction in contract price or fee.

(b) The clause at 252.227-7030, Technical Data—Withholding of Payment, is designed to assure timely delivery of technical data and shall be included in solicitations and contracts requiring delivery of technical data. Unless the contract specifies a lesser withholding limit, the clause permits withholding up to 10 percent of the contract price. The contracting officer shall determine the amount to be withheld after considering the estimated value of the technical data to the Government. Payment shall not be withheld when non-delivery results from causes beyond the control and without the fault or negligence of the contractor.

(c) As required by 10 U.S.C. 2320(b)(7), the clause at 252.227-7036, Certification of Technical Data Conformity, shall be included in solicitations and contracts which include the clause at 252.227-7031, Data Requirements.

227.473-6 Subcontractor rights.

(a) Prime contractors must satisfy their contractual obligations to the Government while ensuring that the rights afforded subcontractors under 10 U.S.C. 2320 and 2321 are recognized and protected. In satisfying these obligations, prime contractors must accomplish the balancing of interests described at 227.472-1 in dealing with their subcontractors by ensuring that—

(1) The clauses 252.227-7013, Rights in Technical Data and Computer Software, and 252.227-7018, Restrictive Markings in Technical Data, are included in all subcontracts that call for delivery of technical data to the Government;

(2) A subcontractor is not hampered from furnishing limited rights data directly to the Government rather than through the prime contractor or higher-tier subcontractor;

(3) The economic leverage of the prime or higher-tier subcontractor is not used to acquire rights in technical data from subcontractors; and

(4) Subcontractor rights are recognized and protected in the notification and listing process (see 227.473-1).

(b) The prime contractor may not use its obligation to recognize and protect subcontractor rights in technical data as an excuse for failing to satisfy its contractual obligations to the Government.

227.474 [Reserved]

227.475 Other procedures.

227.475-1 Data requirements.

(a) The clause at 252.227-7031, Data Requirements, shall be included in all solicitations and contracts, except that the clause need not be included in—

(1) Any contract or order less than $25,000;

(2) Any contract awarded to a contractor outside the United States, except those awarded under Subpart 225.71, Canadian Purchases;

(3) Any research or exploratory development contract when reports are the only deliverable item(s);

(4) Any service contract, when the contracting officer determines that the use of the DD Form 1423 is impractical;

(5) Any contract under which construction and architectural drawings and specifications are the only deliverable items;

(6) Any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(7) Any contract for items containing potentially dangerous material requiring controls to assure adequate safety, when the only deliverable data is the Materials Safety Data Sheet (MSDS) required by the clause at FAR 52.223-3.

(b) The clause at 252.227-7031, Data Requirements, states that the contractor is required to deliver only data listed on the DD Form 1423 and data deliverable under clauses prescribed in the FAR and DFARS.

227.475-2 Deferred delivery and deferred ordering.

(a) *General.* Technical data and computer software are expensive to prepare, maintain and update. By delaying the delivery of technical data or computer software until needed, storage requirements are reduced and the probability of using obsolete technical data and computer software is decreased. Purchase of technical data and computer software which may become obsolete because of hardware changes is also minimized.

(b) *Deferred delivery.* When the contract requires delivery of technical data or computer software, but does not contain a time for delivery, the clause at 252.227-7026 "Deferred Delivery of Technical Data and Computer Software", shall be included in the contract. The clause permits the contracting officer to require the delivery of data identified as "deferred delivery" data at any time until two years after acceptance by the Government of all items (other than data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data expires two years after the date the prime contractor accepts the last item from the subcontractor for use in the performance of the contract. The contract must specify which technical data "or" computer software will be subject to deferred delivery. The contracting officer should provide sufficient notice to permit timely delivery of the technical data or computer software.

(c) *Deferred ordering.* When a potential need exists for technical data or computer software, but a firm requirement is not established, the clause at 252.227-7027, "Deferred Ordering of Technical Data or Computer Software", should be included in the contract. Under this clause, the contracting officer may order any technical data or computer software that has been generated as part of the performance of the contract. The contracting officer may order technical data or computer software under this clause at anytime until three years after acceptance of all items (other than technical data or computer software) under the contract or contract termination, whichever is later. The obligation of subcontractors to deliver such technical data or computer software expires three years after the data the contractor accepts the last item under the subcontract. When the data and computer software are ordered, the delivery dates shall be negotiated and the contractor compensated for converting the technical data or computer software into the prescribed form. Compensation to the contractor shall not include the cost of technical data or computer software which the Government has already paid for.

[53 FR 43699, Oct. 28, 1988; 53 FR 50416, Dec. 15, 1988]

227.475-3 Warranties of technical data.

The factors contained in subpart 246.7, Warranties, shall be considered in deciding whether to include warranties of technical data. The basic technical data warranty clause is set forth in the clause at 252.246-7001. There are two alternates to the basic clause. The basic clause and appropriate alternate should be selected in accordance with section 246.708.

[53 FR 43699, Oct. 28, 1988; 53 FR 50416, Dec. 15, 1988]

227.475-4 Delivery of technical data to foreign governments.

When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice to the contractor or subcontractor asserting rights in the technical data. Any release shall be subject to a prohibition against further release, use or disclosure.

227.475-5 Overseas contracts with foreign sources.

The clause at 252.227-7032, Rights in Technical Data and Computer Software (Foreign), should be used in solicitations and contracts with foreign sources when the Government will acquire unlimited rights in all deliverable technical data, and computer software. However, the clause shall not be used in contracts for special works (see section 227.476), contracts for existing works (see section 227.477), or contracts for Canadian purchases (see subpart 225.71, Canadian Purchases). However, the clause at 252.227-7013, "Rights in Technical Data and Computer Software", shall be used whenever the rights to be obtained are those which would be obtained if contracting with United States firms. Either clause may be modified to meet the peculiar requirements of the foreign acquisition: *Pro-*

vided, it is consistent with sections 227.472 and 227.481.

227.475–6 [Reserved]

227.475–7 [Reserved]

227.475–8 Publication for sale.

Alternate I of the clause at 252.227-7013, Rights in Technical Data and Computer Software, may be used in research contracts when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor:

(a) Would be in the interest of the Government;

(b) Would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government.

227.476 Special works.

(a) The clause at 252.227-7020, Rights in Data—Special Works, shall be used in all contracts where the Government needs ownership and control of the work to be generated under the contract. Examples include:

(1) Production of audiovisual works including motion pictures;

(2) Television recordings with or without accompanying sound;

(3) Preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like;

(4) Histories of the respective Departments for services or units thereof;

(5) Works pertaining to recruiting, morale, training, or career guidance;

(6) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and

(7) Production of technical reports and studies.

(b) Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are acquired.

227.477 Contracts for acquisition of existing works.

(a) *Acquisition of existing works.* (1) The clause at 252.227-7021, Rights in Data—Existing Works, shall be used in contracts exclusively for the acquisition of existing motion pictures, television recordings, or other audiovisual works. The contract may contain limitations consistent with the purposes for which the material covered by the contract is being acquired. Examples of these limitations are—(i) means of exhibition or transmission; (ii) time; (iii) type of audience; and (iv) geographical location. The indemnity language in paragraph (c) of the clause may be modified to be consistent.

(2) In contracts which call for the modification of existing motion pictures, television records, or other audiovisual works through editing, translation, or addition of subject matter, the clause at 252.227-7020, Rights in Data—Special Works, appropriately modified, shall be used.

(b) *Off-the-Shelf Acquisition of Books and Similar Items.* Unless the right to reproduce technical data is an objective of the contract, no contract clause prescribed in this part need be included in contracts solely to acquire data, other than motion pictures, which exist before the start of the acquisition (such as the off-the-shelf acquisitions of existing products).

227.478 Architect-engineer and construction contracts.

227.478–1 General.

This section sets forth policies and procedures, pertaining to data, copyrights, and restricted designs unique to the acquisition of construction and architect-engineer services.

227.478–2 Acquisition and use of plans, specifications, and drawings.

(a) *Architectural Designs and Data Clauses for Architect-Engineer or Construction Contracts*—(1) *Plans and Specifications and As-Built Drawings.* (i) Except as provided in (a)(1)(ii) below, use the clause at 252.227-7022, Government Rights (Unlimited), in solicitations and contracts for architect-engineer services and for construction involving architect-engineer services.

(ii) When the purpose of a contract for architect-engineer services or for construction involving architect-engineer services is to obtain a unique architectural design of a building, a monument, or construction of similar nature, which for artistic, aesthetic or other special reasons the Government does not want duplicated, the Government may acquire exclusive control of the data pertaining to design by including the clause at 252.227-7023, Drawings and Other Data to Become Property of Government, in solicitations and contracts.

(2) *Shop Drawings for Construction.* The Government shall obtain unlimited rights in shop drawings for construction. In solicitations and contracts calling for delivery of shop drawings, include the clause at 252.227-7033, Rights in Shop Drawings.

227.478-3 Contracts for construction supplies and research and development work.

The provisions and clauses required by this section shall not be used when the acquisition is limited to either (a) construction supplies or materials, (b) experimental, developmental, or research work, or test and evaluation studies of structures, equipment, processes, or materials for use in construction; or (c) both.

227.478-4 [Reserved]

227.478-5 Approval of restricted designs.

The clause at 252.227-7024, Notice and Approval of Restricted Designs, may be included in architect-engineer contracts to permit the Government to make informed decisions concerning noncompetitive aspects of the design.

227.479 Small Business Innovative Research Program (SBIR Program).

(a) Public Law 97-219, "Small Business Innovation Development Act of 1982", requires the Department of Defense to establish a Small Business Innovation Research Program (SBIR Program). Small Business Administration (SBA) Policy Directive No. 65-01 provides guidance on the program.

(b)(1) Data and computer software generated under an SBIR program contract shall not be disclosed outside the Government for two years after contract completion, except—

(i) When necessary for program evaluation, or

(ii) When the contractor consents in writing to additional disclosure.

(2) Upon expiration of the period of non-disclosure, the Government shall have a nonexclusive, worldwide, royalty-free license in technical data and computer software for Government use.

(c) Copyrights in technical data and computer software generated under an SBIR program contract shall, when agreed to in writing by the contracting officer, be owned by the contractor. The Government should obtain a royalty-free license under any copyright. Each publication of copyrighted material should contain an appropriate acknowledgment and disclaimer statement.

(d) The clause at 252.227-7013, Rights in Technical Data and Computer Software, with its Alternate II, shall be included in all contracts awarded under the SBIR Program which require delivery of technical data or computer software.

227.480 Copyrights.

(a) In general, the copyright law gives a copyright owner exclusive rights to—

(1) Reproduce the copyrighted work;

(2) Prepare derivative works;

(3) Distribute copies or phonorecords to the public;

(4) Perform the copyrighted work publicly; and

(5) Display the copyrighted work publicly.

(b) Any material that is protected under the copyright law is not in the public domain, even though it may have been published. Acts inconsistent with the rights in (a) above may not be exercised without a license from the copyright owner.

(c) Department of Defense policy allows the contractor to copyright any work of authorship first prepared, produced, originated, developed, or generated under a contract, unless the work is designated a "special work". If the work is a special work, the Government retains ownership and control of the work. The contractor may not assert any rights or claim to copyright in special works. The contractor is required to grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any work of authorship (other than a "special work") first prepared, produced, originated, developed, or generated under the contract.

(d) The clause at 252.227-7013, Rights in Technical Data and Computer Software, requires the contractor to grant the Government and authorizes the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes, under any copyright owned by the contractor in any technical data or computer software prepared for or acquired by the Government under the contract. The clause at 252.227-7020, Rights in Data—Special Works, requires that any work first produced in the performance of the contract become the sole property of the government, and the contractor agrees not to assert any rights or establish any claim to copyright in such work. This clause requires that the contractor grant to the Government and authorize the Government to grant to others a nonexclusive, paid-up, worldwide license for Government purposes in any portion of a work which is not first produced in the performance of the contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under the contract.

(e) The clauses at 252.227-7013 and 252.227-7020 provide that, unless written approval of the contracting officer is obtained, the contractor agrees not to include in any work prepared, produced, originated, developed, generated or acquired under the contract; any work of authorship in which copyright is not owned by the contractor without acquiring for the Government and those acting by or on behalf of the Government a nonexclusive, paid-up, worldwide license for Government purposes in the copyrighted work.

§ 227.481 Acquisition of rights in computer software.

§ 227.481-1 Policy.

(a) The Government shall have unlimited rights in:

(1) Computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) Computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) Computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government; (ii) information in which the Government has unlimited rights; or (iii) information which is in the public domain;

(4) Computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) Computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights provided in the definition of restricted rights in section 227.471.

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. title 28, United States Code, section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see section 227.7011.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in the definition of limited rights in section 227.471, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (c)(1)(ii) of the clause at 252.227-7013, Rights in Technical Data and Computer Software.

227.481-2 Procedures.

(a) *Deviations.* All requests for deviations from this § 227.481 shall be submitted to the DAR Council in accordance with the procedures in FAR 1.404.

(b) *General.* (1) Except as provided under 252.227-7031, Data Requirements, any computer program or computer data base to be acquired under a contract shall be listed on the Contract Data Requirements List (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(2) The clause at 252.227-7013, Rights in Technical Data and Computer Software, shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause at 252.227-7013, Rights in Technical Data and Computer Software, is required, the provision at 252.227-7019, Identification of Restricted Rights Computer Software, shall be included in the solicitation.

(3) Contracts under which computer software developed at private expense is acquired or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being acquired. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights are provided in the Rights in Technical Data and Computer Software clause at 252.227-7013, and need not be included in the recital.

(4) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(5) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

(c) *Computer software subject to restricted rights.* (1) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in paragraph 227.481-1(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(2) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No. ______ with (Name of Contractor).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227-7013", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 227.473-4(c).

(3) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(4) Except as provided in paragraph (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(5) All markings, (notices, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(6) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape, and in the case of a disc pack, on the hub of the disc.

(d) *Unmarked or improperly marked computer software.* (1) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(2) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at its own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall

relieve the Government of liability for any use, duplication or disclosure of such computer software.

(3) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

[53 FR 43699, Oct. 28, 1988; 53 FR 50416, Dec. 15, 1988]

227.482 [Reserved]

Subpart 227.6—Foreign License and Technical Assistance Agreements

227.670 Scope.

This subpart prescribes policy with respect to Foreign License and Technical Assistance Agreements.

227.671 General.

In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop or encourage the development of foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this subpart as a "primary source," agrees to furnish to a foreign concern or government, herein referred to as a "second source;" foreign patent rights; technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids, or such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and the Government, a foreign government, or a foreign concern. The consideration for providing such foreign license and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include actual costs; charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques; and the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

227.672 Policy.

It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments in negotiating contract prices for foreign license technical assistance contracts (227.675) or supply contracts with second sources (227.674); and in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 227.675).

227.673 Foreign license and technical assistance agreements between the government and domestic concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(1) The primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or data which the Government has the right to possess, use, and disclose to others; or any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(2) The separate agreement between the primary and second source shall include a statement referring to the contract between the Government and the primary source, and shall conform to the requirements of the International Traffic in Arms Regulations (see 227.675-1).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) above:

(1) The actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(2) The extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(3) The Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

227.674 Supply contracts between the government and a foreign government or concern.

In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(a) Shall obtain from the second source a detailed statement (see FAR 27.204-1(a)(2)) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data, and technical assistance; and

(b) Shall not accept or allow charges which in effect are—

(1) For royalties or amortization for patents or inventions in which the Government holds a royalty-free license; or

(2) For data which the Government has a right to possess, use, and disclose to others; or

(3) For any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

227.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

227.675-1 International traffic in arms regulations.

Pursuant to section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 CFR, et seq.) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the

Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State.

227.675-2 Review of agreements.

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of sections 124.07—124.10 of the International Traffic in Arms Regulations or in what respects it is deficient. Paragraphs (b) through (g) below provide general guidance.

(b) When it is reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement, or that Military Assistance Program funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a re-
luction in charges thereunder, with
espect to purchases by or for the
Government or by others with funds
erived through the Military Assist-
nce Program or otherwise through
ne Government, in recognition of the
overnment's rights in patents and
ata, the Department concerned shall
aluate the amount of the reduction
determine whether it is fair and
asonable in the circumstances,
fore indicating its approval.

2) If the agreement does not specify
y reduction in charges or otherwise
ls to give recognition to the Govern-
nt's rights in the patents or data in-
ved, approval shall be conditioned
on amendment of the agreement to
lect a reduction, evaluated by the
partment concerned as acceptable
the Government, in any charge
reunder with respect to purchases
de by or for the Government or by
ers with funds derived through the
tary Assistance Program or other-
through the Government, in ac-
lance with section 124.10 of the
rnational Traffic in Arms Regula-
s.

If the agreement provides that
harge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (1), (2), or (3) above, the guidance in (c) below shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of section 124.10, insofar as the Department of Defense is concerned if:

(i) The agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) The primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) The agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) Evaluate the acceptability of the provision before indicating its approval; or

(ii) Explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) above, a request shall be made to the primary source (1) to identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors, (2) to identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and (3) to segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance. Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

Subpart 227.70—Infringement Claim Licenses, and Assignments

227.7000 Scope.

This subpart precribes policy, procedures, and instructions for use o clauses with respect to processing l censes, assignments, and infringemen claims.

227.7001 Policy.

Whenever a claim of infringement o privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This subpart 227.7 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

227.7002 Statutes pertaining to administrative claims of infringement.

Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 3 U.S.C. 181-188; 10 U.S.C. 2386; 2 U.S.C. 1498; and 35 U.S.C. 286.

227.7003 Claims for copyright infringement.

The procedures set forth herein wi be followed, where applicable, in copyright infringement claims.

227.7004 Requirements for filing an administrative claim for patent infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 227.7002, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

(1) An allegation of infringement;

(2) A request for compensation, either expressed or implied;

(3) A citation of the patent or patents alleged to be infringed;

(4) A sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;

(5) A designation of at least one claim of each patent alleged to be infringed; or

(6) As an alternative to (4) and (5) above, a certification that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) above, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

(1) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.

(2) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(3) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(4) Names and addresses of all past and present licenses under the patent(s), and copies of all license agreements and releases involving the patent(s).

(5) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(6) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(7) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(8) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(9) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(10) A copy of the Patent Office file of each patent if available to claimant.

(11) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art. In addition in the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth above, the sender shall be advised in writing—

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*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of The Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(i) That his claim for infringement has not been satisfactorily presented, and

(ii) Of the elements considered necessary to establish a claim.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

227.7005 Indirect notice of patent infringement claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 227.7004 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 227.7004 shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

* For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of the Judge Advocate General; for the Defense Logistics Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 227.7004(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 227.7004(d).

227.7006 Investigation and administrative disposition of claims.

An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(i) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 208.7002. Any agreement in settlement of the claim, approved pursuant to 208.7002 shall be executed by each of the Departments concerned.

(ii) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

227.7007 Notification and disclosure to claimants.

When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

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227.7008 Settlement of indemnified claims.

Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

227.7009 Patent releases, license agreements, and assignments.

This section contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights. Minor modifications of language (e.g., pluralization of "Secretary" or "Contracting Officer") in multidepartmental agreements may be made if necessary.

227.7009-1 Required clauses.

(a) Officials Not To Benefit. Insert the clause at FAR 52.203-1.

(b) Covenant Against Contingent Fees. Insert the clause at FAR 52.203-5.

(c) Gratuities. Insert the clause at FAR 52.203-3.

(d) Assignment of Claims. Insert the clause at FAR 52.232-23.

(e) Disputes. Pursuant to FAR 33.014, insert the clause at FAR 52.233-1.

(f) Non-Estoppel. Insert the clause at 252.227-7000.

227.7009-2 Clauses to be used when applicable.

(a) Release of Past Infringement. The clause at 252.227-7001 is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel. (See footnotes at end of clause.)

(b) Readjustment of Payments. The clause at 252.227-7002 shall be inserted in contracts providing for payment of a running royalty.

(c) Termination. The clause at 252.227-7003 is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel.*

*For the Department of the Army, Chief, Patents, Copyrights, and Trademarks Division, U.S. Army Legal Services Agency; for the Department of the Air Force, Chief, Patents Division, Office of the Judge Advocate General; for the Defense Logistics Agency, The Patent Counsel; for the Department of the Navy, the Patent Counsel for the Navy, Office of Naval Research; for the Defense Communications Agency, The Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

227.7009-3 Additional clauses—contracts except running royalty contracts.

The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) License Grant. Insert the clause at 252.227-7004.

(b) License Term. Insert one of the clauses at 252.227-7005 Alternate I or Alternate II, as appropriate.

227.7009-4 Additional clauses—contracts providing for payment of a running royalty.

The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) License Grant—Running Royalty. No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the License Grant clause at 252.227-7006 should be limited to the practice of the invention by or for the signatory Department or Departments.

(b) License Term—Running Royalty. The clause at 252.227-7007 is a sample form for expressing the license term.

(c) Computation of Royalties. The clause at 252.227-7008 providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of contract pursuant to which the procurement is to be accomplished.

(d) Reporting and Payment of Royalties. (1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The clause at 252.227-7009 is a sample for expressing reporting and payment of royalties requirements.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) License to other government agencies. When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the clause at 252.227-7010 is an example which may be used.

227.7010 Assignments.

(a) The clause at 252.227-7011 is an example which may be used in contracts of assignment of patent rights to the Government.

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths (35 U.S.C. 261).

227.7011 Procurement of rights in inventions, patents, and copyrights.

Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses at 252.227-7004 and 252.227-7010 shall be required and suggested clauses, respectively, for license agreements and assignments made under this paragraph. The instructions at 227.7009-3 and 227.7010 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

227.7012 Contract format.

The format at 252.227-7012 appropriately modified where necessary, may be used for contracts of release, license, or assignment.

227.7013 Recordation.

Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

PART 228—BONDS AND INSURANCE

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Subpart 228.70—[Reserved]

Subpart 228.71—Accident Reporting and Safety

228.7101 Accident reporting.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46240, Dec. 23, 1986, unless otherwise noted.

228.001 Definitions.

Self-insurance means the assumption or retention of the risk of loss, whether voluntarily or involuntarily, by the contractor. Self-insurance includes the deductible portion of purchased insurance. Insurance provided by captive insurers; i.e., insurers owned by or under the control of the contractor, is self-insurance except that if the captive insurer sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive forces, then the insurance will be considered purchased insurance. This definition applies only to contracts subject to the provisions of Cost Accounting Standard (CAS) 416 or to contracts not subject to the provisions of CAS 416 when the contractor elects to establish a program of self-insurance (FAR 31.205-19(a)). Self-insurance is not recognized on contracts not subject to the provisions of CAS 416 unless the contractor makes such an election.

[51 FR 46240, Dec. 23, 1986, as amended at 53 FR 38181, Sept. 29, 1988]

Subpart 228.1—Bonds

228.101 Bid guarantee.

228.101-1 Policy on use.

(b) Only separate bid bonds, or United States bonds, Treasury notes or other public debt obligations of the United States are acceptable for construction contracts.

[54 FR 16117, Apr. 21, 1989]

228.101-3 Contract clause.

(b) The contracting officer shall insert the clause at 252.228-7007, Bid Bond, in lieu of FAR clause 52.228-1, in solicitations and contracts for construction.

[54 FR 16118, Apr. 21, 1989]

228.102 Performance and payment bonds for construction contracts.

228.102-1 General.

(a) The requirement of a performance and payment bond has been waived for all cost-reimbursement type construction contracts. In unusual circumstances, either or both bonds may be required of a prime contractor, subject to approval by the Chief of the Contracting Office. Contracting officers shall, however, require a cost-reimbursement type prime contractor to obtain a payment bond from his subcontractor in favor of the prime contractor, in an amount sufficient to assure payment of suppliers of labor and materials for any fixed-priced construction subcontract exceeding $25,000. In such a case, a performance bond in an equal amount should also be obtained if available at no additional cost.

228.103 Performance and payment bonds for other than construction contracts.

228.103-1 General.

Subcontract bonds shall not be executed on Standard Forms 25 and 25-A, or on DD Form 1673. The forms set forth in FAR 53.228 are authorized and may be adapted to fit specific cases.

228.103-2 Performance bonds.

(a)(1) Subject to the general policy stated in FAR 28.103-2, determinations that performance bonds will be required in specified classes of cases (e.g., for particular types of supplies or services) may be made (i) for the Army, by the Director and Deputy Director of Procurement and Production, US Army Materiel Command, and by all Heads of Contracting Activities not subordinate to that command; (ii) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (iii) for the Air Force, by the Director of Contracting and Manufacturing Policy, DCS/RD&A; (iv) for the Defense Logistics Agency, by the Executive Director, Contracting; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Nuclear Agency, by the Director; (vii) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); and for the Defense Mapping Agency, by the Staff Director of Logistics. A copy of each such determination covering a class of cases shall be forwarded to the Office of Assistant Secretary of Defense (Acquisition and Logistics) for information.

(a)(4) The contracting officer shall insert the provision at 252.228-7004, Bonds or Other Security, as well as the clause at FAR 52.228-1, Bid Guarantee, in solicitations for dismantling, demolition, or removal of improvements in accordance with 237.302.

228.105 Other types of bonds.

228.105–70 Fidelity and forgery bonds.

Fidelity and forgery bonds are not generally required in any procurement. However, in connection with cost-reimbursement contracts for supplies, construction, or for operation of government-owned plants, such bonds may be required when necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claims services of a surety company. Approval for requiring these bonds shall be obtained, (a) for the Army, by the Head of a Contracting Activity; (b) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (c) for the Air Force, by the Air Force Logistics Command (PMC); (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director, and (h) for the Defense Mapping Agency, by the Staff Director of Logistics.

228.106 Administration.

228.106–2 Substitution of surety bonds.

A new surety bond may be substituted when approved, (a) for the Army, by The Judge Advocate General; (b) for the Navy, by the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (c) for the Air Force, by the Air Force Logistics Command; (d) for the Defense Logistics Agency, by the Head of a Contracting Activity; (e) for the National Security Agency, by the Director of Procurement; (f) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (g) for the Defense Nuclear Agency, by the Director; and (h) for the Defense Mapping Agency, by the Staff Director of Logistics. When so approved and authorized by Departments other than the Air Force, the principal and surety of the original bond will be notified that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond. When approved by the Air Force, authority to relieve an original surety of liability for default occurring subsequent to the date of approval of a substitute bond will be obtained from the Commander, Air Force Logistics Command, prior to giving such notification.

228.106–70 Review of bonds and notification of surety.

All bonds will be reviewed by the contracting officer to ascertain that the bond is in the penal sum required and, when appropriate, properly describes the contract. Additional review, approval, and distribution of bonds and consents of surety will be accomplished by each military department. When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see FAR 49.402-4(a)).

Subpart 228.3—Insurance

228.304 Risk-pooling arrangements.

The following describes the Department of Defense Special Casualty Insurance Rating Plan, the National Defense Projects Rating Plan.

(a) *Special casualty insurance rating plan.* The National Defense Projects Rating Plan is available for application on both domestic and foreign contracts, which meet the eligibility requirements set forth herein. This plan provides a special rating formula for the purchase of the casualty insurance coverages listed in FAR 28.307-2 (a) through (c), and is mandatory as to contracts which meet the use and eligibility standards in (c) below. Construction subcontractors whose contracts provide that the prime contractor shall furnish insurance, and whose operations are at the project site, shall be included automatically in the prime contractor's rating plan policies for similar coverage. Construction subcontractors whose operations are away from the project site shall be included in the prime contractor's rating plan.

(b) This plan is effected by endorsements attached to standard insurance policy forms for workers' compensation, employer's liability, general liability, and automobile liability. The rating plan provides for a fixed deposit premium, for a reduced rate of current premium payments, for yearly adjustments of the premium depending upon loss experience during the period, and for final adjustment of the premium based upon the experience of the entire period covered by the policies. The final adjustment may be deferred for a maximum of 68 months after expiration of the policies. The total adjusted premium is the sum of the following:

(1) A fixed charge which is a percentage of the standard premium and is to compensate the insurance company for general expenses other than those referred to hereafter;

(2) Modified losses, which are the losses paid or incurred, multiplied by a conversion factor of 1.12 to compensate the insurance company for claim department expense;

(3) Allocated claims expenses, which are expenses for claims services not of the type ordinarily rendered by the insurer's claim department, such as actual expenditures for attorney's fees and other trial or hearing expenses in connection with litigated cases;

(4) Special assessments imposed by the applicable jurisdiction for purposes such as second injury funds, rehabilitation funds, maintenance of workers' compensation commissions, etc.; and

(5) Actual premium taxes.

Each of the above adjustments are subject to review by authorized representatives of the Department concerned, and the total adjusted premium derived therefrom, cannot exceed a maximum premium which is a percentage of the standard premium developed by use of manual rates issued or approved by the appropriate rating organization. In general, the plan is a variation of commercially available insurance rating plans, but has been specifically developed to meet the requirements of the Departments.

(c) The rating plan shall be applied to all eligible defense projects where such application is determined by the Heads of Contracting Activities, for the Department of the Army; the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management—CM, for the Department of the Navy; Air Force Systems Command, administrative contracting officers, for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA-AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; to be in the best interest of the Government. The rating plan may be applied to cost-reimbursement type contracts and also, in appropriate cases, to fixed-price contracts with price redetermination provisions. A defense project is eligible for application of a plan when (i) eligible Government contracts represent, at inception of the plan, at least 90 percent of the payroll for total operations at the specific locations of the project; and (ii) the annual premium for insurance is estimated to be at least $10,000. A defense project may include contracts awarded by more than one Department to the same contractor.

(d) The following agreement shall be used for accomplishing the assignment to the Government of the interest in return premiums, premium refund, etc., on insurance policies issued under the National Defense Projects Rating Plan, upon termination or completion of the contract, when the Government has assumed the payment of the contractor's obligation for further premium payment under such policies:

SPECIAL CASUALTY INSURANCE RATING PLAN ASSIGNMENT-ASSUMPTION OF PREMIUM OBLIGATIONS

It is agreed that 100%* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy ________ applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100%* of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America and the Company shall be effective from ________.

Accepted..(Date)
(Name of Insurance Company)
By ____________________
(Title of Official Signing)
Accepted..(Date)
United States of America
By ____________________
(Authorized Representative)
Accepted..(Date)
(Prime Contractor)
By ____________________
(Authorized Representative)

(e) Since the Federal Tort Claims Act provides protection for employees of the Government while driving government-owned vehicles within the scope of their employment, the National Defense Projects Rating Plan shall exclude coverage for such employees. The following endorsement shall be attached to automobile liability coverage provided under the plan:

> It is agreed that such insurance as is afforded by the policy with respect to the ownership, maintenance or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

228.305 Overseas workers' compensation and war hazard insurance.

(d) Requests for waivers shall be submitted through channels (1) for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (RDA); (2) for the Navy, to the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management; (3) for the Air Force, to the Directorate of Contracting and Manufacturing Policy, Headquarters USAF; (4) for the Defense Logistics Agency, to the Deputy Director, Contract Administration Services, Attn: DLA-AF; (5) for the Defense Communications Agency, to the Chief, Contract Management Division; (6) for the Defense Nuclear Agency, to the Chief, Office of Procurement; and (7) for the Defense Mapping Agency, to the Staff Director of Logistics. The request for waiver shall include the following:

(i) Name of contractor;

(ii) Business mailing address of contractor;

(iii) Contract number;

(iv) Date of award;

(v) Geographic location where the contract will be performed;

(vi) Name of insurance company providing the Defense Base Act coverage;

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*In the event the Government has less than a 100% interest in premium refunds or dividends, the assignment shall be appropriately modified to reflect the percentage of interest and of the extent of the Government's assumption of additional premium obligation.

(vii) Nationality of employees to whom waiver is to apply; and

(viii) Reason for waiver.

(e) When the clause at FAR 52.228-4 is required and if it is decided by the Head of the Contracting Activity or designee that the contractor shall not purchase insurance against this liability, the contracting officer shall insert the clause at 252.228-7000, Reimbursement for War Hazard Losses.

[51 FR 46240, Dec. 23, 1986, as amended at 53 FR 38181, Sept. 29, 1988]

228.306 Insurance under fixed-price contracts.

(a) *General.* (1) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in (2) below, include the clause at 252.228-7001, Ground and Flight Risk.

(2)(i) In paragraph (b) of the clause at 252.228-7001, certain of the defined terms may be modified by insertion of appropriate additional definitions in the contract in accordance with the following. The purpose of the clause is to have the Government to assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the contract as set forth below.

(A) Since the standard definition of "aircraft" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(B) The definition of "in the open" may be modified to include "hush houses", test hangars, and comparable structures, and other designated areas;

(C) "Contractor's premises" shall be expressly defined and shall be limited to those locations where aircraft, as defined in the clause, may be located during and for the performance of the contract. "Contractor's premises" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(ii) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in 252.228-7002, suitably adapted for use in a fixed-price type contract, shall be used.

(iii) Subparagraph (d)(iii) of the clause in 252.228-7001 may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

228.307 Insurance under cost-reimbursement contracts.

228.307-1 Group insurance plans.

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts shall be submitted for approval to the Heads of

Contracting Activities, for the Department of the Army; the Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Director, Contracts & Business Management, for the Department of the Navy; Air Force Systems Command, administrative contracting officers, for the Department of the Air Force; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Director, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency. For the Defense Logistics Agency such plans shall be submitted for approval to the Directors, Directorate of Contract Administration, DCASR New York (DCRN-C), DCASR Chicago (DCRIC), or DCASR Los Angeles (DCRL-C), as appropriate.

(S-70) The Defense Department Group Term Insurance Plan is available for use by cost-reimbursement type contractors. A contractor is eligible only if the number of covered employees is 500 or more, and (i) the contractor is wholly engaged in operations under eligible contracts, or (ii) 90 percent or more of the payroll of contractor's operations to be insured under the Plan arises under eligible contracts. Insurance policies under this plan shall be submitted for approval to the Heads of Contracting Activities, for the Department of the Army; the Assistant Secretary of the Navy (S&L) (CBM), for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA-AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency.

228.307-2 Liability.

(S-70) *Aircraft flight risk.*

(1) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (2) below, include the clause at 252.228-7002, Flight Risks.

(2) In the clause, the definition of "aircraft" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

228.309 Contract clauses for workers' compensation insurance.

(S-70) The Contracting Officer is authorized to insert the clause at 252.228-7003, Capture and Detention, when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

Subpart 228.71—Accident Reporting and Safety

228.7101 Accident reporting.

The contracting officer may insert the clause at 252.228-7006, Accident Reporting and Investigation Involving Aircraft, Missiles and Space Launch Vehicles, in solicitations and contracts which involve or are in connection with the manufacture, modification, overhaul or repair of aircraft, missiles or space launch vehicles.

PART 229—TAXES

Subpart 229.1—General

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229.101 Resolving tax problems.
229.101-70 Resolving foreign tax relief issues.

Subpart 229.3—State and Local Taxes

229.303 Application of state and local taxes to government contractors and subcontractors.

Subpart 229.4—Contract Clauses

229.402 Foreign contracts.
229.402-1 Foreign fixed-price contracts.
229.402-70 Use of foreign tax clauses.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46243, Dec. 23, 1986, unless otherwise noted.

Subpart 229.1—General

229.101 Resolving tax problems.

(a) Agency-designated legal counsel are responsible for resolving tax issues affecting the agency. Within the Department of Defense, these agency-designated legal counsel are: Chief, Contract Law Division, Office of the Judge Advocate General, for the Army; the General Counsel, for the Navy; the General Counsel, for the Air Force; the General Counsel, for the Defense Logistics Agency; the General Counsel, for the National Security Agency; the General Counsel, for the Defense Communications Agency; the General Counsel, for the Defense Nuclear Agency; and the General Counsel, for the Defense Mapping Agency.

(b) and (c) Within the Department of Defense, a contractor having a cost-reimbursement type contract or a fixed-price type contract containing a tax escalation clause may be directed, after coordination with the appropriate agency-designated legal counsel through the Department of Defense Tax Policy and Advisory Group, to litigate the applicability of a particular tax. In such cases, guidance will be issued in Defense Acquisition Circulars informing purchasing activities of the litigation, the need for special contract clauses covering the tax in question, and instructions to be given contractors regarding nonpayment, payment, protest or other specific treatment of the tax. In addition, similar guidance may be furnished concerning an anticipated repeal or reduction in he rate of a tax. It is particularly important that this guidance be considered by those negotiating incentive ype contracts in order that the tax in uestion may be treated separately in he establishment of a target price.

29.101-70 Resolving foreign tax relief issues.

(a) The definitions, policies, and reponsibilities of the DoD Foreign Tax elief Program are set forth in DoD Directive 5100.64, and that Directive and applicable implementing regulations or instructions should be consulted by contracting activities prior to the initiation of foreign procurement. Implementing instructions within the Services and DoD agencies are as follows:

Department of the Army Regulation AR 27-70;

Department of the Navy Instruction SECNAVINST 5840.5;

Department of the Air Force Regulation AFR 110-18;

Defense Communications Agency Instruction 100-50-6;

Defense Contract Audit Agency Regulation 5110.2;

Defense Mapping Agency Instruction 5500.2;

Defense Nuclear Agency Instruction 5100.64; and

Defense Logistics Agency Regulation 5500.6.

(b) In addition, the following Unified Commands have issued management procedures to guide and coordinate the administration of the foreign tax relief program throughout their respective area commands—

Commander in Chief, European Command (USCINCEUR) EUCOM DIRECTIVE 45-8;

Commander in Chief, Atlantic Command (CINCLANT) CINCLANTINST 5840.2A;

Commander in Chief, Pacific Command (CINCPAC) CINCPACINST 5840.2B

As regards Canada and Greenland, Commander, SPACE COMMAND Regulation 110.1.

(c) Questions relating to the implementation of the DoD Foreign Tax Relief Program shall first be referred to the designated Commanding Officers below. Several foreign countries or areas have been designated, pursuant to subsection E.7 of DODD 5100.64, to make and maintain a current tax law study, serve as a single point of contact for U.S. contracting officers and contracting activities for the investigation and resolution of specific foreign tax relief matters, and to serve as a liaison point with the responsible diplomatic mission and local foreign tax authorities:

Country or area	Designated commanding officer
Australia	Commander in Chief, Pacific Rep., Australia.
Azores	Commander, U.S. Forces, Azores.
Bahrain	Commander in Chief, U.S. Naval Forces, Europe.
Belgium	Commander in Chief, U.S. Army, Europe.
Bermuda	Commanding Officer, U.S. Naval Air Station, Bermuda.
Canada	Commander, Space Command.
Caribbean Islands (including Bahamas).	Commander, Antilles Defense Command.
Denmark	Commander in Chief, U.S. Air Forces, Europe.
Ethiopia	Commander in Chief, U.S. Army, Europe.
France	Commander in Chief, U.S. Army, Europe.
Germany	Commander in Chief U.S. Army, Europe.
Greece	Commander in Chief, U.S. Air Forces, Europe.
Greenland	Commander, Space Command.
Iceland	Commander, Iceland Defense Force.
Iran	Commander in Chief, U.S. Army, Europe.
Italy	Commander in Chief, U.S. Naval Forces, Europe.
Japan	Commander, U.S. Forces, Japan.
Korea	Commander, U.S. Forces, Korea.
Luxembourg	Commander in Chief, U.S. Army, Europe.
Morocco	Commander in Chief, U.S. Naval Forces, Europe.
Netherlands	Commander in Chief, U.S. Air Forces, Europe.
New Zealand	Commander, U.S. Naval Support Forces, Antarctica.
Norway	Commander in Chief, U.S. Air Forces, Europe.
Philippines	Commander in Chief, Pacific Rep., Philippines.
Portugal	Commander in Chief, U.S. Naval Forces, Europe.
Spain	Commander in Chief, U.S. Air Forces, Europe.
Taiwan	Commander, U.S. Military Assistance Command, Thailand.
Turkey	Commander in Chief, U.S. Air Forces, Europe.
United Kingdom	Commander in Chief, U.S. Air Forces, Europe.

(d) The activity initially raising the tax issue shall, in turn, refer unanswered questions on the DoD Foreign Tax Relief Program to its agency designated legal counsel listed at 229.101.

Subpart 229.3—State and Local Taxes

229.303 Application of state and local taxes to government contractors and subcontractors.

(a) (1) It is DoD policy that DoD contracts shall not contain contract clauses expressly designating prime contractors of cost-type contracts to be performed within the United States as agents of the Government to purchase supplies for the purpose of avoiding state and local taxes. This policy was adopted to preclude the inclusion of contract clauses designed to avoid otherwise validly imposed state or local taxes.

(2) Although circumstances may exist under which a contractor is an agent of the Government, even in the absence of a contract clause expressly designating the contractor as such, these circumstances are exceedingly rare. Before any DoD activity may contend that any of its contractors are agents of the Government for the purpose of claiming immunity from state and local sales and use taxes, the matter will be referred to the Office of the Secretary of Defense (OSD), Under Secretary of Defense (R&E) for review to ensure that DoD policy is complied with and that the agency contention is fully in accord with the pertinent legal principles and precedents. Each case forwarded will be reviewed by the head of the agency before referral to OSD. The referral will include all pertinent data on which an agency contention is based, together with a thorough analysis of all relevant legal precedents.

(3) Whenever clauses, procedures and business practices are cited by DoD activities to support the contention that a contractor is an agent of the Government for the purpose of immunity from a state or local sales or use tax, contracting activities should, whenever possible, devise alternative clauses, procedures and practices for future use which will accomplish their intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state or local sales or use taxes. Therefore, any referral to OSD will in-

clude comment on the extent to which alternate clauses, procedures or practices may be utilized to accomplish the intended purpose without providing the basis for the contention that the contractor is an agent of the Government for the purpose of immunity from state and local sales and use taxes.

Subpart 229.4—Contract Clauses

229.402 Foreign contracts.

229.402-1 Foreign fixed-price contracts.

(S-70) The contracting officer shall insert a clause substantially as shown at 252.229-7000, Fixed-Price, Into-Plane, Fuel Contracts at Overseas Locations, in solicitations and contracts when a fixed-price contract is contemplated for into-plane fueling at overseas locations.

229.402-70 Use of foreign tax clauses.

(a) *Exclusion of specific taxes from the contract price.* The contracting officer shall not attempt to provide a contractor or prospective contractor information as to foreign taxes or duties normally applicable to the acquisition. The contracting officer shall, however, at the time of negotiation of a contract to be performed in a country or area listed in 229.101-70(c) obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law. Information obtained by the contracting officer regarding exemptions shall be made available to the contractor or prospective contractor and retained as part of the contract file.

(b) *Tax exemption certificates and other assistance.* During the administration of the contract, the contracting officer shall, as appropriate, issue tax exemption certificates or use other procedures, if available, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price. If, in accordance with its contract, the contractor notifies the contracting officer that a tax or duty has been assessed by a foreign government on the contractor which could result in an increase in the contract price, the contracting officer shall immediately seek advice and assistance in accordance with 229.101-70(d).

PART 230—COST ACCOUNTING STANDARDS

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46245, Dec. 23, 1986, unless otherwise noted.

Subpart 230.1—General

230.103 Cost Accounting Standards Board (CASB) publications.

Copies of the CASB Standards, Regulations, and Interpretations are contained in Appendix O.

Subpart 230.6—CAS Administration

230.601 Responsibility.

(a) In accordance with FAR part 30, Cost Accounting Standards, and FAR Part 31, Contract Cost Principles and Procedures, the cognizant contract auditor shall be responsible for making recommendations to the ACO as to whether:

(1) A contractor's Disclosure Statement, submitted as a condition of contracting, adequately describes the actual or proposed cost accounting practices as required by Pub. L. 91-379, 50 U.S.C. App. 2168, as implemented by the Cost Accounting Standards Board;

(2) A contractor's disclosed cost accounting practices are in compliance with FAR Part 31 and applicable cost accounting standards.

(3) A contractor's or subcontractor's failure to comply with applicable cost accounting standards or to follow consistently his disclosed cost accounting practices has resulted, or may result in, any increased cost paid by the Government; and

(4) A contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

[51 FR 46245, Dec. 23, 1986. Redesignated at 53 FR 38247, Sept. 29, 1988]

Subpart 230.70—Facilities Capital Employed for Facilities in Use

SOURCE: 52 FR 28714, Aug. 3, 1987, unless otherwise noted.

230.7001 Policy.

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the preformance of defense contracts.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) Guidance for establishing a prenegotiation profit objective on contractor facilities capital employed is contained in 215.970-1(c).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis. (See FAR 31.205-10(a).)

230.7002 Definitions, Measurement, and Allocation.

Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital" (See Appendix 0), establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB-CMF with instructions. This Subpart adopts techniques of CAS 414 as the approved methods of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Subpart from the same data bank and programs.

230.7003 Estimating Business Unit Facilities Capital and Cost of Money.

The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB-CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Pub. L. 92-41. These elements are discussed below.

(a) *Business unit facilities capital data.* The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of (1) the net book value of facilities recorded on the accounting records of the business unit, (2) the capitalized value of leases (see FAR 31.205-2 and FAR 31.205-36), and (3) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, e.g., facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see FAR 31.205-17).

(b) *Overhead allocation bases.* The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest rate.* For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB-CMF and the same rate must be used on the DD Form 1861, "Contract Facilities Capital Cost of Money" (see 230.7004 below). Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred cost will be recognized by development of a composite rate.

(d) *Determination of final cost of money.* CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the prenegotiation profit objectives. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and FAR 31.205-10.

230.7004 Contract facilities capital estimates.

(a) After the appropriate Forms CASB-CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. A form has been provided for linking the Form CASB-CMF and DD Form 1547, "Record of Weighted Guidelines Method Application": DD Form 1861, Contract Facilities Capital Cost of Money. This is necessary to provide the degree of differentiation sought in the profit to be established for varying asset types (land, buildings, equipment). An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB-CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or prenegotiation cost objective, and are listed against each separate Form CASB-CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, the Contract Facilities Capital Employed can be determined by dividing the contract Cost of Money by that same rate. DD Form

1861 has been designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

230.7005 Pre-award facilities capital applications.

Facilities Capital Cost of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows:

(a) *Cost of money*—(1) *Cost objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a prenegotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities capital employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 215.970-1(c).

230.7006 Post-award facilities capital applications.

(a) *Interim billings based on costs incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and FAR 31.205-10, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB-CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

230.7007 Administrative procedures.

(a) Contractor submission of Forms CASB-CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (see FAR 15.809), and evaluated as complementary documents and procedures. Separate forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) The contracting officer using the Weighted Guidelines Method under 215.970 will complete a DD Form 1861 only after evaluating the contractor's cost proposal and establishing a prenegotiation objective on cost. Computer generated forms for completing a DD Form 1861 are acceptable, provided all essential data elements are adequately identified. The contracting officer may also request completion of these forms in connection with normal field pricing support under 215.805 by the cognizant contract administration office.

(c) If the Weighted Guidelines Method is to be used, it will be necessary for the contracting officer to obtain information from the contractor that is not included on the Form CASB-CMF. The DD Form 1861 requires the distribution percentages of land, buildings, and equipment for the business unit performing the contract (distribution by indirect expense pool is not necessary). This information is needed to compute capital employed profit rewards, which are differentiated among the asset types. The contracting officer may choose the most practical method for obtaining this information from the contractor. The following are some possible approaches:

(1) Contract administration offices located at contractor business segments which expect to have a reasonably large number of negotiated contract awards could obtain the information through the process used to establish factors for facilities capital cost of money. Contract administration offices could establish advance agreements on distribution percentages for inclusion in field pricing reports presented to the contracting officer.

(2) The distribution percentages could be obtained by the corporate administrative contracting officer and sent to interested contract administration offices or purchasing offices.

(3) In cases where such information cannot be reasonably provided through the contract administration office or corporate administrative contracting officer, the contracting officer could request the information through a solicitation provision.

(d) A final Form CASB-CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates and be evaluated as complementary documents and procedures.

Subpart 230.71—Facilities Capital Employed for Facilities Under Construction

230.7101 Policy.

It is the policy of the Department of Defense to recognize a contractor's investment in capital facilities while these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is (a) calculated in accordance with 230.7103 below, (b) capitalized along with the other costs of the asset for which the investment is made, and (c) allocated to Department of Defense contracts in accordance with 230.7104.

230.7102 Definitions.

The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (See appendix O).

(a) *Intangible capital asset.* An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

(b) *Tangible capital asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of money rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

(i) Determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

(i) Determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or

(ii) Treat month-end balances as individual representative investment amounts.

230.7103 Measurement.

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 230.7102(c)) to the representative investment amount (see 230.7102(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 230.7102(d)(1)(i) or 230.7102(d)(2)(1) the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 230.7102(d)(2)(ii) or 230.7102(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month (Note: Under this method, the cost of money calculation is made monthly and the total for the cost accounting period is the sum of the monthly calculations).

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

230.7104 Composition and allocation of costs.

(a) The cost of money for a tangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation pursuant to FAR 31.205-11.

(b) The cost of money for an intangible capital asset determined in accordance with 230.7102 and 230.7103 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with 230.70 it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

230.7105 Limitations.

If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

230.7106 Preaward capital employed application.

An offset to the profit objectives as set forth in FAR 15.9 is not required for CAS 417 cost of money.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 231.1—Applicability

Sec.

231.101 Objectives.

231.103 Contracts with commercial organizations.

Subpart 231.2—Contracts With Commercial Organizations

231.201 General.

231.205-1 Public relations and advertising costs.

231.205-10 Cost of money.

231.205-18 Independent research and development and bid and proposal costs.

231.205-38 Selling costs.

Subpart 231.70—Penalties for Unallowable Costs

231.7001 Penalties for Unallowable Costs.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46248, Dec. 23, 1986, unless otherwise noted.

Subpart 231.1—Applicability

231.101 Objectives.

Pursuant to FAR 31.101 and to reflect DoD policy, the DAR Council has granted certain exceptions to FAR part 31 cost principles. These exceptions are set forth in this supplement.

231.103 Contracts with commercial organizations.

(S-70) The FAR and this supplement apply to purchases and contracts made by the DoD in support of Foreign Military Sales (FMS) (see 201.103). Accordingly, the cost principles and procedures in FAR 31.2, as supplemented, shall be used in pricing FMS contracts (see 225.7304 and 225.7305).

Subpart 231.2—Contracts With Commercial Organizations

231.201 General.

The contracting officer shall insert the clause at 252.231-7000, Supplemental Cost Principles, in all solicitations and contracts, except acquisitions made under the small purchase procedures in FAR part 13.

231.205-1 Public relations and advertising costs.

(f)(2) Costs of shows and other special events, such as conventions and trade shows, lacking a significant effort to promote export sales of products of the U.S. defense industry, including—

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(f)(8) All public relations costs, other than those specified in FAR 31.205-1(e), whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under FAR 31.205-38(c) and DFARS 231.205-38(c) (S-70), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services. Nothing in this paragraph (f)(8) modifies the express unallowability of costs listed in FAR 31.205-1 (f)(3) through (f)(7), or DFARS 231.205-1(f)(2). The purpose of this paragraph (f)(8) is to provide criteria for determining whether costs not specifically identified should be unallowable.

(g) FAR 31.205-1(g) does not apply to the Department of Defense.

[53 FR 51561, Dec. 22, 1988]

231.205–10 Cost of money.

(a)(2)(i) The contractor's capital investment must also be measured, allocated to contracts, and costed in accordance with 230.70.

(ii) The contractor must also maintain records to demonstrate compliance with (i) above.

(b)(2)(i)(A) The cost of money must be calculated, allocated to contracts, and costed in accordance with 230.70.

(B) The contractor must also maintain records to demonstrate compliance with (A) above.

231.205–18 Independent research and development and bid and proposal costs.

(c)(1)(vii) The total amount of IR&D/B&P costs allocated to DoD contracts shall not exceed the total of expenditures for IR&D/B&P projects with a potential relationship to a military function or operation. For contracts which do not provide for cost determinations on a historical basis, the requirement will be considered to have been met if the estimated IR&D/B&P costs allocated to the contract do not exceed its proportionate share of the total estimated costs of IR&D/B&P with a potential relationship to a military function or operation. IR&D/B&P costs will be considered to satisfy the potential relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation. The potential relationship of IR&D/B&P will be determined by the contracting officer, and the results of the determination will be made available to the contractor. For additional allowability requirements affecting Foreign Military Sales (FMS) contracts, see 225.7304.

231.205–38 Selling costs.

(b) Other market planning costs are allowable to the extent that they are reasonable and comply with the provisions of paragraph (c) (S-70) of this section.

(c) (S-70) The costs of broadly-targeted and direct selling efforts and market planning other than long-range, which are incurred in connection with a significant effort to promote export sales of products of the U.S. defense industry, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the Department of Defense provided:

(i) The costs are allocable, reasonable, and otherwise allowable under this part and part 31 of the FAR. However, costs normally unallowable under FAR 31.205-1(f)(5) or DFARS 231.205-1(f)(2) (i) and (iii) or 231.205-1(f)(8) are allowable under this paragraph (c) (S-70).

(ii) That, with respect to a business segment which allocates to Department of Defense contracts $2,500,000 or more of such costs in any fiscal year of such business segment, the allowable amount of such costs shall not be in excess of 110% of such costs incurred by such business segment in the previous fiscal year.

(iii) In order to comply with Pub. L. 100-456, the substance of this paragraph (c) (S-70) shall apply to all contracts (and subcontracts) of the contractor with the Department of Defense being performed by the contractor on the first day of the contractor's first full fiscal year that begins on or after the date this paragraph (c) (S-70) became effective, whether or not a contract or subcontract contains this paragraph (c) (S-70). This paragraph (c) (S-70) (iii) is effective until September 28, 1991.

(d) The cost of any selling efforts other than those addressed in FAR 31.205-38(b) or (c) or paragraph (c) (S-70) of this section are unallowable.

(e) Costs of the type identified in FAR 31.205-38(b) or (c) and in paragraphs (c) (S-70) and (d) of this section are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of FAR 31.201-6 and FAR 30.405, and such costs are not allowable merely because they are incurred in connection with allowable selling activities.

(f) Additional allowability requirements for FMS contracts are contained in DFARS 225.7304 and 225.7305.

[53 FR 51561, Dec. 22, 1988; 54 FR 2258, Jan. 19, 1989]

Subpart 231.70—Penalties for Unallowable Costs

§ 231.7001 Penalties for Unallowable Costs.

(a) *General.* (1) 10 U.S.C. 2324 (a) through (d) prescribes the assessment of penalties when contractors submit unallowable costs in proposals for settlement of indirect costs under covered Department of Defense contracts. Covered contracts include all Department of Defense contracts awarded after February 26, 1987, in excess of $100,000 other than fixed-price contracts without cost incentives. Covered contracts will contain either the clause at 252.231-7001 or the clause at 262.231-7002. It is not necessary that unallowable costs have been paid to the contractor in order to assess a penalty.

(2) An unallowable cost is defined at FAR 31.001.

(3) The law provides for the following penalties:

(i) If the cost is unallowable based on clear and convincing evidence, the penalty is equal to (A) the amount of the disallowed cost plus (B) interest on the paid portion, if any, of the disallowance.

(ii) If the cost was determined to be unallowable before proposal submission, the penalty is equal to (A) the amount in (a)(3)(i) above plus (B) two times the amount of the disallowed cost.

(iii) If any penalty is assessed under paragraph (a)(3) (i) or (ii) above, an additional penalty of not more than $10,000 per proposal may be assessed.

(4) These penalties are in addition to other civil and criminal penalties provided by law.

(5) Not every claim for unallowable costs is evidence of a false or fraudulent claim, but if evidence exists that the contractor knowingly submitted unallowable costs, the agency should refer the matter to the appropriate Defense criminal investigative organization for review. Subsequent agency actions regarding such matters shall be taken in accordance with DoDD 7050.5, "Coordination of Remedies for Fraud and Corruption Relating to Procurement Activities".

(b) *Responsibilities*—(1) *Contracting officer.* (i) The cognizant administrative contracting officer (ACO) is responsible for determining whether the penalties in paragraphs (a)(3) (i) and (ii) above should be assessed. This determination should be based upon a review of all relevant facts including, as appropriate, comments from the contractor.

(ii) The ACO is responsible for initiating recommendations that the penalty under paragraph (a)(3)(iii) be assessed.

(2) *Agency.* (i) Agencies are responsible for designating officials authorized to assess the penalty in paragraph (a)(3)(iii).

(ii) Agencies are responsible for establishing requirements for documentation and review of ACO determinations to assess the penalties in paragraphs (a)(3) (i) and (ii), and ACO recommendations to assess the penalty in paragraph (a)(3)(iii).

(3) *Contract auditor.* The contract auditor, in review and/or determination of final rate proposals for covered contracts, shall recommend to the ACO which costs may be unallowable and subject to the penalties in paragraphs (a)(3) (i) and (ii). Any recommendation shall include the auditor's rationale and supporting documentation.

(c) *Guidelines*—(1) *Assessing the penalty.* (i) The ACO shall assess the penalty in paragraph (a)(3)(i) when the submitted cost is unallowable based on clear and convincing evidence.

(ii) The ACO shall also assess the penalty in paragraph (a)(3)(ii) when the submitted cost was determined to be unallowable prior to submission of the proposal. Prior determinations of unallowability may be evidenced by the following documentation:

(A) A DCAA Form 1 (see FAR 42.705-27 which: (*1*) the contractor elected not to appeal; or (*2*) was not withdrawn by DCAA.

(B) A contracting officer final decision which was not appealed.

(C) Prior ASBCA or Court decision which upheld a cost disallowance involving the contractor.

(D) Any determination of unallowability under the procedures provided in FAR 31.201-6, Accounting for unallowable costs.

(iii) The ACO shall issue a demand letter (see FAR 33.211) to the contractor for payment of any penalty assessed under paragraph (a)(3)(i) or (a)(3)(ii) above. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the applicable penalty is separated from demanding repayment of the paid portion of the disallowed cost.)

(iv) The designated official, after receiving the ACO's recommendation and where circumstances warrant the additional penalty, may assess the penalty in paragraph (a)(3)(iii) above. Appropriate circumstances may include repeated submission of unallowable costs.

(2) *Computing the penalty.* (i) The amount of the disallowed costs subject to penalty is the amount submitted in the contractor's proposal which is allocated to the covered contracts (see paragraph (a)(1)) and which is determined to be unallowable, based on clear and convincing evidence by the contracting officer.

(ii) Interest is to be computed on the paid portion of the disallowed cost.

(A) The overpayment may be considered to have occurred, and interest to start running, from the midpoint of the contractor's fiscal year. An alternate equitable method should be used if the cost was not incurred and paid evenly over the fiscal year.

(B) The interest rate specified by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) shall be used.

(C) Interest shall be computed from the date of overpayment to the date of the demand letter for payment of the penalty.

(D) The paid portion of the disallowed cost will be determined in consultation with the contract auditor.

(d) *Contract clauses.* (1) The contracting officer shall insert the clause at 252.231-7001, Penalties for Unallowable Costs, in all solicitations and contracts exceeding $100,000 which contain the clause at FAR 52.216-7 or FAR 52.216-13.

(2) The contracting officer shall insert the clause at 252.231-7002, Penalties for Unallowable Costs—Fixed-Price Incentive, in all solicitations and contracts exceeding $100,000 which contain the clause at FAR 52.216-16 or 52.216-17.

[52 FR 5771, Feb. 26, 1987, as amended at 53 FR 38238, Sept. 29, 1988]

PART 232—CONTRACT FINANCING

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232.806 Contract clauses.

Subpart 232.9—Prompt Payment

232.905 Invoice payment.
232.906 Contract financing payments.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46249, Dec. 23, 1986, unless otherwise noted.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or state of completion will be confined to contracts for construction, shipbuilding and ship conversion, alteration or repair.

(S-70) *Provisional Delivery Payments.* The contracting officer may establish provisional delivery prices to pay contractors for the costs of supplies and services delivered to and accepted by the Government on undefinitized contract actions. Such delivery arrangements are restricted to (1) letter contracts contemplating a definitive fixed-price type of contract, (2) orders under basic ordering agreements, (3) spares provisioning documents annexed to contracts, and (4) fixed-price contracts for increases in contract price for unpriced equitable adjustments. The provisional delivery prices shall not prejudice the price subsequently definitized between the contracting officer and contractor. They should be used sparingly and priced conservatively to cover no more than a reasonable estimate of the costs of items to be included in the provisional delivery arrangement and shall not include any amount for profit. Provisional delivery payments shall not exceed funds obligated for the undefinitized contract action and shall be reduced by liquidating previous progress payments made on the items delivered to and accepted by the Government in accordance with the provisions of the Progress Payments clause.

[51 FR 46249, Dec. 23, 1986, as amended at 52 FR 47005, Dec. 11, 1987]

232.103 Progress payments construction contracts.

For DoD construction contract actions funded with FY 87 appropriations, the amount of retainage shall not exceed 15 percent. For all other DoD construction contracts, the amount of retainage shall not exceed 10 percent.

[53 FR 35511, Sept. 14, 1988, and 54 FR 26207, June 22, 1989]

232.108 Financial consultation.

The contract financing offices are: The Chief of Contract Financing, Office of the Comptroller of the Army; the Executive Assistant Comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management; the Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center; and the Comptroller, Defense Logistics Agency. For other Departments, the contracting financing office will be within the Office of the Agency Comptroller.

232.111 Contract clauses.

(S-70) [Reserved]

(S-71) The contracting officer shall insert the clause at 252.232-7005, Payments Under Fixed Price Construction Contracts, in lieu of FAR clause 52.232-5, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract is funded with FY 87 appropriations. The FAR clause at 52.232-5 shall be used for all other solicitations and contracts for construction when a fixed-price contract is contemplated.

(S-72) The contracting officer shall insert the clause at 252.232-7006, Payments Under Fixed-Price Architect-Engineer Contracts, in lieu of FAR clause 52-232-10, appropriately modified with respect to payment due dates, in solicitations and fixed-price architect-engineer contracts when the contract is funded with FY 87 appropriations. The FAR clause at 52.232-10 shall be used for all other solicitations and fixed-price architect-engineer contracts.

[51 FR 46249, Dec. 23, 1986, as amended at 52 FR 30369, Aug. 14, 1987; 53 FR 3752, Feb. 9, 1988; 53 FR 35511, Sept. 14, 1988; 53 FR 38186, Sept. 29, 1988; 54 FR 26207, June 22, 1989]

232.170 Responsibilities.

232.170-1 Organization.

The financing function should be separated from the procurement function, but close cooperation should be preserved at all times. For progress payments, contract financing officers will ordinarily participate in the development of appropriate regulations and standard contract provisions designed to avoid undue risk to the Government, and in specific cases involving policy questions or unusual financing arrangements.

232.170-2 Resolution of disagreements.

If a disagreement arises between the financing office and the procuring activity on financing provisions, the matter will be referred to and resolved in the higher echelons of the authority responsible for both financing and procurement functions.

232.170-3 Responsibility, administration, contract finance committee.

The Assistant Secretary of Defense (Production and Logistics) has the responsibility for insuring uniform administration of financing. Only policy issues or important procedural problems shall be referred to the Office of the Assistant Secretary of Defense (Production and Logistics). Usual financing operations shall be the responsibility of the Departments.

(a) Responsibility for financing in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function, with the focal point for such activities at Departmental headquarters. Contract financing offices may be established at the operational level determined by the Departments.

(b) There shall be a Contract Finance Committee composed of a representative of the Assistant Secretary of

Defense (Production and Logistics) as chairman, a representative of the Assistant Secretary of Defense (Comptroller), and two representatives of each Military Department and DLA (one representing procurement and one representing the contract finance office). The Committee shall meet upon call by the Chairman or when requested by a member. The Committee shall advise and assist the Assistant Secretary of Defense (Production and Logistics) in assuring proper and uniform application of policies, procedures and forms. The Committee may recommend to the Secretary of Defense through the Assistant Secretary of Defense (Production and Logistics) further policy directives on financing matters. The Committee shall be responsible for the formulation, revision and promulgation of uniform contract financing regulations.

[51 FR 46249, Dec. 23, 1986, as amended at 53 FR 38186, Sept. 29, 1988]

232.171 Deviations.

Actions in the exercise of the judgment and discretion allowed by these regulations are not deviations. Actions contrary to or inconsistent with these regulations constitute deviations. Deviations will be permitted only in exceptional circumstances, after the proposed deviation has been presented to the Contract Finance Committee and a recommendation obtained, and the approval of the Assistant Secretary of Defense (Production and Logistics) or his designated representative has been given. This procedure will also be followed for amendments to these regulations.

[51 FR 46249, Dec. 23, 1986, as amended at 53 FR 38186, Sept. 29, 1988]

232.172 Financial responsibility of contractors.

Procuring activities must give due regard to the financial capabilities of potential suppliers. Financial difficulties encountered by contractors and subcontractors may disrupt production schedules; cause wastage of manpower and materials; and if connected with guaranteed loans, advance payments or progress payments, result in monetary loss to the Government. If financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continued production, even though monetary losses may be likely.

232.173 Financial information and analysis.

(a) The necessity for financial information and analysis of the financial capability of contractors vary with the circumstances of particular cases. Judgment must be used in accumulating and evaluating data. Financial analysis would serve little useful purpose when providing customary progress payments:

(1) For contractors who are known from experience to be fairly relied upon to perform their contracts satisfactorily;

(2) For contractors who are in a satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are within the normal sales volume of the contractor. In such cases, the financial evaluation may consist of scrutiny of the contractor's balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as detailed as necessary to fit the circumstances.

(b) Obtaining and analyzing data on a contractor's financial capability is of particular importance when:

(1) The contractor is a new supplier,

(2) The contractor has not supplied the item (or a similar item) within the preceding twelve months,

(3) The contractor is a newly organized concern,

(4) The contractor is on a list requiring pre-award clearances or special clearance prior to award,

(5) The contractor is on any current list indicating current or post contract defaults or delinquencies,

(6) The contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on Government or commercial work,

(7) The contractor is listed on the Consolidated List of Contractors In-

debted to the Government (Hold-Up List), or,

(8) There are any facts or circumstances which support reasonable doubts as to the contractor's financial capability to perform.

232.174 Appropriate information.

The kinds of information and data that may be appropriate in particular cases are outlined below. Only those items which are appropriate to a particular case are required. The purpose of obtaining this data is to gain a full understanding of the propriety and reasonable necessity for contract financing, for evaluation of a contractor's ability to perform contracts without loss to the Government, and for informed judgment related to terms, conditions and protective provisions that may be appropriate for the protection of the Government.

(a) Balance sheet and income statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; latest available interim balance sheet and income statement of the current fiscal year; a separate statement of amounts of defense and commercial sales. If audited reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; if a proprietorship, partnership or joint venture, personal financial statements of proprietor, partners, or members of joint venture and description of individual liabilities of partners or members of joint venture on contracts of partnership or joint venture;

(b) Summary history of contractor and its principal management personnel, indicating particularly any past insolvencies of the contractor or a predecessor or of the officers, partners, or proprietors; also a description of its products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor or its affiliates; also, if a corporation, list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past two years; also past and projected dividends, unless obtained with (a) above;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see 232.174-1 and 232.174-2);

(g) Estimated income statements and estimated balance sheets (see 232.174-3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including (1) loans and credits, (2) advances and progress payments, (3) projected equity capital increases, (4) deferred trade credit, if any, (5) creditor subordinations or standbys, and (6) mortgages, liens, pledges, assignments, conditional sales, lease/purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated;

(k) Status of all tax accounts, particularly Federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of Federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate (1) leases, deferred purchased arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor, (2) insurance maintained and to be maintained, (3) contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock, (4) delinquencies on contracts, subcontracts or purchase orders, and status thereof, (5) pending or anticipated liability for contract price refunds, or for renegotiation, or for other Government claims, (6) anticipated losses on contracts, (7) contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened, (8) aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable, (9) obsolescence of inventory and method of valuing inventory, (10) aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items, (11) adequacy of reserves for depreciation, (12) analysis of surplus;

(m) Significant ratios such as (1) inventory to annual sales, (2) inventory to current assets, (3) liquid assets to current assets, (4) liquid assets to current liabilities, (5) current assets to current liabilities, and (6) net worth to debt;

(n) Comments and opinion of audit agency concerning contractor's accounting system and controls, and available audit agency analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this 232.174.

232.174-1 Cash flow forecast and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated income statements and estimated balance sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgement as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess or projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projects readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

232.174-2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. Most important of these assumptions are the—

(1) Estimated amounts and timing of purchases of materials, parts, components, subassemblies, services, and payments therefor;

(2) Estimated amounts of timing of purchases of machinery and equipment, other production or test facili-

ties, other fixed assets, and purchases or production of special tooling, and payments therefore;

(3) Schedule of fixed cash charges, such as debt installments, interest, rentals and taxes;

(4) Projected manufacturing and production schedules;

(5) Projected shipments, or delivery acceptances;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

The assumptions underlying cash forecasts should be checked for reasonableness and realism—with the contractor, Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources)—as may be prudent in the circumstances of the case.

232.174-3 Estimated income statements and balance sheets.

The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated income statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated income statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance.

232.175 Interpretations.

It is important that these regulations and contract clauses be applied fairly and uniformly for all contractors. When a serious question of interpretation or application of these regulations arises, an advance opinion should be obtained from the procurement policy office at the headquarters of the Department primarily interested. If the circumstances do not reasonably permit requesting an advance opinion, report of an interpretation made should be made to the appropriate Departmental headquarters procurement policy office. That office should obtain the views of interested offices of the other Departments, including the contract financing offices (232.108). When questions submitted are considered to be of importance in the general interest of uniformity and of fair and effective administration of these regulations, appropriate revision of these regulations will be considered. Changes and additions to these regulations will be developed by the Contract Finance Committee (see 232.170-3(b) and 232.171).

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency, among others, are designated as "guaranteeing agencies" within the Department of Defense.

232.304 Procedures.

232.304-1 Application for guarantee.

(a) Guaranteed loans will be used primarily for working capital purposes and not for facilities expansion. Guarantees are not precluded where a relatively small portion of the loan might be used for facilities expansion of a minor or incidental nature, provided that the contractor's financial condition is such that the facilities expansion will not impair repayment of the guaranteed loan.

232.304-2 Certificate of eligibility.

(a) Contracting officers are expected to immediately take appropriate steps for the determination of eligibility. Their findings and report, including certificate of eligibility where appropriate, should be submitted to the contract financing office within the guaranteeing agency.

(c) The Department that has the preponderance of interest on the basis of the dollar amount of unfilled and unpaid balances (without regard to the existence of progress payments and without regard to the issuance or nonissuance of certificates of eligibility on particular contracts) on contracts and subcontracts will be the guaranteeing agency. Contracts with advance payments will be included only if the guaranteed loan will liquidate the advance payment. Service procurement contracts are deemed those of the purchasing department. If the application is approved and a guarantee agreement is executed, the guaranteeing agency will bear all losses and expenses and receive all revenues under the guarantee. In exceptional cases, one Department may act for others through a sharing arrangement. If preponderance of interest should shift to another Department during the guaranteed loan period, actions on requests for increases in amount or extension of maturity will ordinarily be taken by the Department with the current preponderance of interest. However, the new guarantee should simply replace the former guarantee so as not to disturb or impair any security for the existing loan. The existing loan agreement and collateral security instruments should be appropriately revised. The contract financing office of the Department which authorized the existing guaranteed loan will transfer the file to the contract financing office of the Department with the current preponderance of interest. If the loan is in distress with foreseeable losses, and the purpose of the request is for the purpose of orderly liquidation of the loan to reduce the amount of the loss, the Department which guaranteed the loan will take action.

232.304-70 Guaranteed loans for an extended period of time.

It is not the policy of the Department of Defense to continue furnishing assistance in the form of guaranteed loans over an extended period of time unless it is reasonably necessary to obtain required products.

Subpart 232.4—Advance Payments

232.404 Exclusions.

(a)(9) In accordance with 10 U.S.C. 503, FAR subpart 32.4 does not apply to advance payments for advertising for military recruitment in high school and college publications not to exceed $500 under any single contract.

232.409 Contracting officer action.

232.409-1 Recommendation for approval.

The departmental contract financing office (see 232.108) shall prepare the documents required by FAR 32.409-1 (e) & (f). This is necessary to assure uniform application of this subpart as required by FAR 32.402(e)(1).

232.410 Findings, determination, and authorization.

(a) Modifications to incorporate special facts and circumstances are permitted.

(b) In cases where the procedure for advance payments without a special bank account is to be used in accordance with 232.470, insert the following paragraph instead of paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410.

> (4) The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for advance payments. These include provisions that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. Such security is deemed to be adequate.

232.412 Contract clause.

(S-70) The contracting office shall insert the clause at 252.232-7001, Advance Payments Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit educational or research and development institution. Normally this will include all cost reimbursement type contracts with the particular institution.

(S-71) The contracting office shall insert the clause at 252.232-7002, Disposition of Payment, in contracts when the payments under the contract are to be made by a disbursing office other than the disbursing office designated in the advance payment pool agreement.

232.470 Procedure for advance payments to nonprofit educational and research and development institutions without a special bank account.

In view of the nonprofit position of educational and certain research institutions and the Government objective of strengthening the research capabilities of these institutions, interest-free advance payments in reasonable amounts may be authorized, when prudent and practical, to finance experimental, research and development contracts. The advance payments may be periodically made directly to the institutions without the use of either a special bank account or letter of credit under the procedure described below:

(a) The contracting officer shall advise the departmental contract financing office upon the award of any cost-type contract to an institution with an advance payment pool arrangement (see 232.471).

(b) The agreement set forth at 232.472 will be used. These arrangements will allow advance payments directly to the contractor to meet its contractual cash needs for the shortest practical periods of time to cover contract performance. The contractor shall periodically determine its cash requirements for contract(s) performance and submit requests for advance payments, in an acceptable format with supporting information as prescribed by the administering office, to the designated approving official who shall determine the necessity for the advance payment. If the approving official concurs with the amount of advance payment requested by the contractor, the request will be promptly approved and forwarded to the designated disbursing office for payment. In the event that the approving official determines that the amount of advance payments requested for the specified period is in excess of the needs, the request will be approved and forwarded to the disbursing office for payment of only the amount needed. The approving official shall act promptly, in accordance with the contract or pool agreement terms and departmental procedures, to resolve any disagreement on the unapproved portion of the request.

(c) The contractor shall submit cost reimbursement vouchers on a monthly basis for the contract(s) being financed by advance payments to the disbursing office designated in the contract. The proceeds from the payments that would otherwise be due the contractor shall be applied in liquidation of the outstanding advance payments. If the proceeds exceed the outstanding advance payments, the remaining balance shall be paid to the contractor.

(d) The advance payments shall be requested, approved, and paid based on estimates. There may be a variance between the contractor's estimated and actual cash requirements for each period. These variances represent over-or-under financing by the Government and could become significant. Consequently, these variances must be identified and taken into consideration with each new request for an advance payment. This is a joint responsibility of the contractor and the approving official.

232.471 Pooled advance payments.

An advance payment pool arrangement is an instrument for conveniently financing the performance of more than one contract, held by a single contractor. The agreement is separate from the contracts financed under it. It is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one DoD purchasing office, DoD procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more DoD procuring activities respectively. Advance payment pool agreements may be established under the statutes mentioned in FAR 32.401 and will be in accordance with the procedure that follows for arrangements with nonprofit institutions. Advance payment pool arrangements with other than nonprofit organizations shall be in accordance with the specific directions of the departmental contract financing office.

232.471-1 Distinction between pool contracts and designated pool contracts.

An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool agreement is based upon the contractor's financing requirements for a group of DoD contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are normally not made on each separate contract, but can be made on and charged against one or more contracts, so as to supply the monetary requirements of smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a "designated pool contract." All other contracts financed by the pool agreement are called "pool contracts."

232.471-2 Advance payment pool agreement—special features.

The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are:

(a) The advance payment pool agreement specifies one or more designated pool contracts, and provides for substitution from time to time of new or different contracts as the designated pool contract(s);

(c) The advance payment pool agreement defines the contracts included as pool contracts, and provides for inclusion of them as they are awarded;

(d) All payments under the pool contracts and designated pool contracts are made into a special bank account, except where the procedure for advance payments without a special bank account is to be used in accordance with 232.409-3 and 232.470. Where a special bank account is not used, payments otherwise due the contractor are applied in liquidation of the outstanding advance payments; and

(e) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

232.471-3 Liquidation—designated pool contracts—administering office.

It is imperative for each advance payment pool that effective arrangements be made to ensure that the advances outstanding do not exceed the amount authorized in the advance payment pool agreement and that timely liquidation is accomplished. For each pool agreement, there shall be a single administering office, and to the extent possible, there should be a single disbursing office for all of the contracts in the pool, especially those contracts which are designated pool contracts.

232.471-4 Advance payment pool—understandings.

Advance payment pools including contracts of more than one Military Department require approval from the contract financing office of each department concerned. The following guidance is provided:

(a) Requests to establish an advance payment pool agreement may be initiated by the contractor, the contracting officer, chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool includes contracts of more than one Military Department, the authorizing Department should be the one having a preponderant interest in the contractor's unfinished contracts. The Military Department with the preponderant interest is the Department with the largest dollar value of the contractor's unfinished contracts. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long-term contract of a nonpreponderant Department as the designated pool contract, or where it is reasonably expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Situations may occur in which the remaining payments available on pool contracts are not sufficient to liquidate the outstanding advance. These circumstances will not affect the normal practice of offsetting mutual debits and credits. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, in proportion to the contract prices of the designated pool contracts.

(d) Normally, records will not be maintained to show separately the amount of advance payments invested in each one of the separate contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of advance payment pools.

232.472 Agreement for advance payments without special bank account.

An agreement with a nonprofit educational or research and development institution for pooled advance payments without a special bank account is constructed by making the following changes to the Advance Payments clause at FAR 52.232-12.

(a) Change the clause title to "Advance Payment Pool Agreement Without Special Bank Account."

(b) Throughout the clause text: Change all occurrences of the word "contract" to "agreement."

(c) Add the following preamble immediately below the title:

This agreement is entered into this ___ day of ____, 19__ between the United States of America (the government), represented by ______________, and

____

(insert institution name and appropriate identification information) (hereinafter referred to as the "contractor").

(d) In paragraph "(a)(2)," in the blank space left for the amount, insert the following:

. . . the amount stated in the Designations and Determinations paragraph hereof or the aggregate of the total unpaid designated pool contracts' prices, whichever is less.

(e) Delete paragraph (b) and insert the following:

(b) Amount of Advance Payments.

(1) The Contractor shall determine the estimated amount of advance payment(s) necessary to meet the requirements of paragraph (c) herein entitled "Use of Funds" to cover performance of the pool contract(s). This determination shall be pursuant to written instructions provided by the Administering Office (see Designations and Determinations paragraph herein) relative to the (i) shortest practical period for which advance payments will be provided, (ii) format and frequency of requests for advance payments, and (iii) data required in support of each request. The estimate shall be adjusted for the amount by which actual cash expenditures for prior period performance of the pool contract(s) exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a request for advance payment(s) to the Approving Official designated in writing by the Administering Office for advance payments. The request should be submitted sufficiently early to permit review, approval, and disbursement of the required advance payment(s) by the time the funds are actually needed by the Contractor.

(2) The Approving Official will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if concurrence is given, the request will be approved and the Disbursing Office designated (see Designations and Determinations paragraph herein) will be notified by the Approving Official to make payment. If the Approving Official determines that the advance payment requested by the Contractor is in excess of cash requirements for performance of the pool contracts during the specified period of time, the Approving Official will approve an amount based on such determination and notify the Disbursing Office of the reduced amount. Upon any such reduction, the Approving Official will immediately notify the Administering Office for this advance payment pool agree-

ment in writing, with a copy to the Contractor, of the amount requested, the amount approved, and the reasons for reduction. The Administering Office will determine whether additional funds will be advanced to the Contractor.

(3) Upon notification of the approved request, the Disbursing Office will draw a Treasury check payable to the Contractor for the amount authorized by the Approving Official and mail such check to the Contractor in time to be received on or about the date the funds are required for contract performance.

(f) Delete paragraph (c) and insert the following:

(c) *Use of Funds.* Advance payments hereunder are to be used by the Contractor solely for the purpose of making payments for direct materials, direct labor, and administrative and overhead expenses allowable in accordance with the provisions of the pool contracts, or for the purpose of reimbursing the Contractor for such payments. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(g) Delete the last sentence of paragraph (d).

(h) Delete paragraph (e) and insert the following:

(e) *Liquidation.* The contractor will submit monthly cost reimbursement vouchers in accordance with the payment provisions of the pool contracts. The Government shall withhold payments of such vouchers due the Contractor and apply the amounts withheld against the Contractor's obligation to repay advance payments made hereunder and interest charges thereon until such advance payments and interest charges shall have been fully liquidated. Upon completion or termination of the advance payment pool agreement, the balance of liquidated advance payments shall be deducted from any amount otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(i) Add the following to the last sentence of paragraph (f)(2):

". . . except as provided in the Liquidation and Default paragraphs herein."

(j) Add the following sentence at the end of paragraph (f)(2):

If interest is required, the interest will be calculated in accordance with paragraph (f) herein.

(k) Delete from paragraph (f)(3):

. . . the higher of (1) the published prime rate of the banking institution (depository) in which the special bank account is established or (ii) . . .

(l) Delete paragraphs (g) and (h).

(m) Change paragraph letters (i) through (p) to (g) through (n).

(n) Delete old paragraph (m) and insert the following:

(k) *Information and Access to Records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(o) Add the following new paragraphs:

(o) *Designations and Determinations:*

(1) *Amount.* The amount of advance payments at any time outstanding shall not exceed $_____ or the aggregate of the total undisbursed obligation of the designated pool contract, whichever is less.

(2) *Administering Office.* The office administering advance payments:

____

(3) *Disbursing Office.* The office making advance payments under this Agreement:

____

(4) *Approving Office.* The approving office shall be __________.

(p) *Limiting Date.* Advance payments made hereunder are to finance all pool contracts subject to this Agreement, including amendments issued thereunder which result in increasing the contract price, that are executed on or before ________ (insert a date, normally not more than two years in the future).

(p) Add the following at the conclusion of the agreement:

Signatures and official titles:

For the Contractor:

____

(name)

____

(title)

____

(date)

For the United States:

____

(name)

____

(title)

____

(date)

Subpart 232.5—Progress Payments Based on Costs

232.501 General.

232.501-1 Customary progress payment rates.

(a) The customary progress payment rate applicable to DoD contracts awarded to large businesses is 75 percent and 80 percent for small businesses. The customary progress payment rate for all other DoD contracts is 80 percent for large businesses, 85 percent for small businesses, and 90 percent for small disadvantaged businesses. If a contract is funded with FY 87 and other fiscal year appropriations, the contracting officer may either (1) apply the progress payment rate applicable to FY 87 appropriations to all line items in the contract, or (2) apply the rate applicable to FY 87 appropriations to only those line items funded with FY 87 appropriations and apply the higher rate to all other line items. However, if multiple progress payment rates are used in a single contract, the requirements of FAR 32.502-4(d) must be met. The customary progress payment rate for flexible progress payments is the rate determined by use of either the CASHII, CASHIII, or CASHIV computer program as applicable in accordance with the requirements of 232.502-1(S-71).

[53 FR 38186, Sept. 29, 1988, and 54 FR 26207, June 22, 1989, as amended at 55 FR 19079, May 8, 1990]

232.501-2 Unusual progress payments.

(a) Contracting officers shall not modify contracts to authorize unliquidated unusual progress payments in excess of $25,000,000 without the prior written consent of the Office of The Assistant Secretary of Defense (Production and Logistics). All other unusual progress payment provisions shall be coordinated by the departmental contract financing office, with the Department of Defense Contract Finance Committee.

[51 FR 46249, Dec. 23, 1986, as amended at 53 FR 38186, Sept. 29, 1988]

232.501-3 Contract price.

(b) For purposes of making progress payments, the contract price may exceed the funds obligated under the contract if the contract contains an appropriate limitation of funds clause. In such cases, the progress payments shall be limited to the lesser of the applicable percentage of the contract price, or 100% of the funds obligated.

232.502 Preaward matters.

232.502-1 Use of customary progress payments.

(b)(1) If the contractor is a small disadvantaged business, progress payments may be provided when the contract will involve $50,000 or more.

(S-70) *Customary FMS progress payments.* (1) FMS progress payments shall be applicable to Department of Defense acquisitions on behalf of foreign governments or international organizations pursuant to section 22 of the Arms Export Control Act (FMS requirements).

(2) FMS progress payments are not applicable to:

(i) Acquisitions for replenishment of U.S. Government inventories or stocks, and

(ii) Acquisitions made under DoD cooperative logistic support arrangements.

(S-71) *Customary flexible progress payments.* (1) Paying progress payments assists in financing a contractor's performance and reduces the contractor's investment in its work in process inventory. The actual investment held by a contractor in work in process inventory is influenced by a number of factors in addition to progress payments, such as delivery schedules, cash management practices, and Government payment practices. Progress payment amounts that are determined by using uniform, standard progress payment rates are insensitive to these other factors influencing investment and, as a consequence, result in investments by contractors in work in process inventory that vary among contractors and across contracts; on the other hand, flexible progress payment rates (expressed as a percentage that will be applied to costs to determine the amount payable as a progress payment in the same manner as uniform, standard progress payment rates) are designed to tailor more closely the progress payment rate to the cash needs for financing performance of a particular contractor for a given contract.

(2) For flexible progress payments, cash needs are measured and projected in relation to investment underlying the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor to complete performance of the contract. The contractor's investment is the weighted average of the amount not paid by the Government. DoD, as a matter of policy, has concluded that a contractor should retain at least a 20% investment in work in process inventory over the life of the contract. Accordingly, the DoD will make progress payments at a rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than 20%. The progress payment rate is to be determined by use of the DoD Cash Flow Computer Model. In no event will the progress payment rate be greater than 100%, or less than the uniform, standard progress payment rate that would have been applied to the contract absent flexible progress payments. For any contracts funded with FY 87 appropriations, a contractor must retain at least a 25% investment in work in process inventory over the life of the contract.

(3) Contracting officers shall use a flexible progress payment rate in lieu of the uniform standard rates if:

(i) The contractor requests the use of flexible progress payments rates,

(ii) The contractor agrees to the requirements of this section, and

(iii) The criteria in paragraph (5) below are met.

(4) The flexible progress payment rate shall be determined through application of the DoD Cash Flow Computer Model, available to contracting officers on the COPPER IMPACT computer time sharing network under the computer file name "CASHV". For contracts funded with FY 87 appropriations, the computer file name "CASHV" shall be used. The model takes into account key cash flow factors, such as contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. Contractors who are registered with the Defense Technical Information Center (DTIC) may obtain copies of the DoD Cash Flow Computer Model User's Guide (ADA148-247) from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145.

(5) Contractors who submit certified cost or pricing data, as defined in FAR 15.804-2, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments. Formally advertised contracts are not eligible for flexible progress payments. Flexible progress payments are not available for contracts awarded and performed entirely outside of the United States, its possessions and territories.

(6) Contractors will furnish to the contracting officer cash flow data in the form and context specified by the DoD Cash Flow Computer Model. These data include: actual and projected incurred cost broken down by element of cost and by month for the duration of the contract, float times for each element of cost, progress payment receipts and delivery payment receipts and associated contract prices and profit percentage. Contracting officers will verify the cash flow data in accordance with normal procedures used to verify contractor cost and pricing data. Administrative contracting officers are encouraged to establish advance agreements at contractor locations for float and payment lag which are common to several contracts. Such agreements should be established when administratively practical.

(7) A redetermination of the flexible progress payment rate shall be made upon the request of the Government or contractor if measurement of the contractor's cumulative investment in work in process inventory using actual and projected cash flow data indicates an investment level above 22% or below 18%. The cash flow computer

model is designed to generate a progress payment rate that yields a target investment of 20%, based on a weighted average. Accordingly, there should normally be no need to request actual and projected contract cash flow data unless delivery schedules are revised, Government progress payment lag times are substantially changed from those used in the establishment of the progress payment rate, or substantial new work (e.g., option) is added to the contract. For contracts funded with FY 87 appropriations, the investment range is 23% to 27%, with a target investment of 25%.

(8) As noted in FAR 32.504, the standards for progress payments to subcontractors ought to be the same as those applicable to prime contractors. Accordingly, subcontractors who request a flexible progress payment rate, meet the criteria in paragraph (5) above and agree to the requirements of this section are to receive a flexible progress payment rate. The subcontract flexible progress payment rate will be determined by the prime contractor without regard to the progress payment rate in the prime contract. The DoD Cash Flow Computer Model and associated procedures will be used by the prime contractor and a reasonable review of the cash flow data provided by the subcontractor will be made.

(9) When flexible progress payments are contemplated for use on a definitive contract superseding a letter contract or an unpriced BOA order, the applicable standard progress payment clause at FAR 52.232-16 shall be used until definitization.

[51 FR 46249, Dec. 23, 1986, as amended at 53 FR 35512, Sept. 14, 1988; 53 FR 38186, Sept. 29, 1988; 54 FR 26207, June 22, 1989; 54 FR 53619, Dec. 29, 1989; 55 FR 19079, May 8, 1990]

232.502-2 Contract finance office clearance.

Deviation from the Progress Payment clause, policy and procedures prescribed in FAR part 32 and this Supplement shall be authorized only by the Office of the Assistant Secretary of Defense (Production and Logistics) in accordance with 232.171.

[51 FR 46249, Dec. 23, 1986, as amended at 53 FR 38186, Sept. 29, 1988]

232.502-4 Contract clauses.

(S-70) The contracting officer shall insert the clause at 252.232-7003, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains FMS requirements.

(S-71) The contracting officer shall insert the clause at 252.232-7004, Flexible Progress Payments, when a flexible progress payment rate is used in the contract. If the contract is funded with FY 87 appropriations, the clause shall be used with its Alternate I.

(S-72) The contracting officer shall insert the clause at 252.232-7007, Progress Payments, in lieu of FAR clause 52.232-16 and its Alternates I and II, as applicable, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs if the contract is funded with FY 87 appropriations. The FAR clause at 52.232-16 and its Alternates I and II shall be used, as applicable, for all other solicitations and fixed-price contracts.

(S-73) If the contract is with a small business concern, the contracting officer shall use the clause at 252.232-7007, Progress Payments, with its Alternate I if the contract is funded with FY 87 appropriations. The FAR clause at 52.232-16, with its Alternate I shall be used for other fixed-price contracts with small business concerns.

(S-74) If the contract is a letter contract, the contracting officer shall use the clause with its Alternate II if the contract is funded with FY 87 appropriations. The FAR clause at 52.232-16, with its Alternate II shall be used for all other letter contracts.

(S-75) If the contract is with a small disadvantaged business concern, the contracting officer shall use the FAR clause at 52.232-16, with its Alternate I, and shall change each mention of the progress payment and liquidation rates (excepting paragraph (k)) to the customary rate of 90 percent for small disadvantaged business concerns.

[51 FR 46249, Dec. 23, 1986, as amended at 53 FR 35512, Sept. 14, 1988; 54 FR 26207, June 22, 1989; 55 FR 19079, May 8, 1990]

232.503 Postaward matters.

232.503-1 Contractor requests.

Subject to the specific requirements of agency procedures, contractor requests for progress payments may be submitted by computer generated equivalents of the Standard Form 1443.

232.503-6 Suspension or reduction of payments.

(g) *Loss contracts.*

(S-70) *Loss ratio adjustment procedures.* The following procedures shall be followed whenever the adjustments required by FAR 32.503-6 (f) and (g) are made;

(i) Except as provided in paragraph (ii) below, the loss ratio adjustment shall be calculated by the contracting officer using the procedures in FAR 32.503-6(g) by preparation of a supplementary analysis to the contractor's request for progress payments;

(ii) The Contractor may be requested to prepare the supplementary analysis as an attachment to the progress payment request, when the contracting officer determines, after a review, that the contractor's methods of estimating the Costs to Complete are reliable, accurate, and not susceptible to improper influences, prejudicial to the Government's interests; and

(iii) In order to maintain an audit trail, and permit verification of calculations, the loss ratio adjustment shall not be made by alteration or replacement of the data on the contractor's original request for progress payment (SF 1443 or computer generated equivalent).

232.503-15 Application of government title terms.

(d) The approval requirements of FAR 32.503-15(d) are met when the ACO has determined that the contractor's material management and accounting system conforms to the standard at 242.7206(b)(7). ACO blanket approval of cost transfers between contracts should be contingent upon the contractor retaining records of the transfer activity that took place in the prior month and reporting, at least monthly, a summary of the transfer activity that took place in the prior month. The summary report should include as a minimum, the total number of transfers and their dollar value.

[54 FR 20592, May 12, 1989]

Subpart 232.6—Contract Debts

232.600 Scope.

This subpart provides additional guidance for the collection of contract debts, the charging of interest thereon, the deferral of payments, the compromise and termination of claims, and the reporting of contractor bankruptcies.

232.601 Definition.

Unless otherwise indicated in this subpart, the contract financing office within each military department and DLA is the "responsible official" for purposes of FAR subpart 32.6.

232.605 Responsibilities and cooperation among Government officials.

(b) A disbursing officer has primary responsibility for determining the amount and collection of contract debt whenever overpayments or erroneous payments have been made. The disbursing officer also has such primary responsibility when the amounts due and dates for payment are fixed by the terms of the contract itself, and copy of such contract has been furnished to the disbursing officer with notice to collect as amounts become due. Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract, including finance and accounting officers at installations where integrated accounting is in effect.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the debt record maintained by a contracting officer shall be closed by appropriate reference to the date of transfer.

When a disbursing officer is primarily responsible for collection, the record of the debt shall be maintained until payment or advice of collection is received. In all cases transferred to a contract financing office, that office shall establish and maintain an accounts receivable record showing all pertinent information relating to the debt, including an indebtedness and payment record reflecting current status, to be closed upon collection or compromise, or referral of the case to the General Accounting Office or to the Department of Justice.

(d) In the absence of a deferment agreement made by the contract financing office, a report of indebtedness will be made to the General Accounting Office upon failure to effect collection within a reasonable period, generally not to exceed 180 days from the date the debt is established.

(e) Before a debt is placed on the Hold-Up List (see 232.173), or before distribution of a new listing, the office undertaking to effect collection may sometimes request other offices having dealings with the contractor on other contracts, whether contracting officers or disbursing officers, to withhold payments on contracts, for application on the debt. Government personnel are expected to cooperate and assist in the fulfillment of such requests, giving due regard, however, to the effect of abrupt cessation of payments on the operations of the contractor, performance of the contracts, and the interest of the United States in such contracts. In the making of these requests to other offices, and in complying with such requests, care will be taken at all times to avoid overcollection or duplicate collection. Each check to liquidate indebtedness pursuant to such requests will be drawn payable to "(contractor's name (or office designated for contract administration))," and transmitted to the disbursing officer on the contract under which the indebtedness arose, and will be accompanied by a statement sufficient to identify the indebtedness to which it is to be applied. Appropriate notice of the deduction will be given to the contractor concerned, by the agency making the deduction.

232.610 Demand for payment of contract debt.

(a) Demands for payment of contract debts resulting from other than a termination for default shall be made by the office which first determines an amount due, whether it be the Contract Administration Office, the Contracting Office, the Disbursing Office, or the selling office/agency, and will be handled in accordance with the regulations of the department or agency to which that office is assigned. A copy of the demand shall be provided to the payment office cited in the contract and designated to receive payment. Demands for payment of contract debts resulting from a termination for default, e.g., excess costs, unliquidated progress payments, and liquidated damages, shall be made by the Procuring Contracting Officer and shall direct the debtor to make payment to an office of the Procuring Department. If this action will result in the payment being made to a payment office other than the one cited in the contract, the assigned ACO will issue a contract modification designating the new payment office.

232.613 Deferment of collection.

(S-70) Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and, if applicable, the assignee, date of filing of appeal or of action with the Claims Court, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. Incident to its review and action of a deferment or installment proposal, the contract financing office may request additional information, as well as other assistance needed from the transmitting office. Such requested information and assistance will be furnished promptly so that final action on the proposed deferment or installment may be taken by the contract financing office without unnecessary delay. Whenever deemed appropriate by the contract financing office, it may deal directly with the contractor concerning collection or deferment of the debt.

(S-71) When the contract financing office enters into a deferral agreement or a compromise, it will furnish copies to the appropriate contracting officer and disbursing officer when deemed necessary.

(S-72) When the contract financing office denies a deferral request, or does not reach agreement with a contractor on a deferment, it will give timely notice to the appropriate contracting officer when deemed necessary.

232.614 Interest.

232.614-1 Interest charges.

(c) The interest rates established by the Secretary of the Treasury will be published in the FEDERAL REGISTER every 6 months. The current rate may also be obtained from the Departmental contract financing office representative.

232.616 Compromise actions.

Department of Defense authority under the cited statute and joint regulations has been delegated to the Departments. Within each Department, for those debts covered by this subpart authority to act in conformity to the cited statute and joint regulations has been delegated to the contract financing office.

232.617 Contract clause.

(a)(7) The following further exceptions have been established:

(i) Contracts for instructions of military personnel or ROTC personnel at civilian schools, colleges, and universities;

(ii) Basic agreements with telephone companies, under which communications services and facilities will be ordered, and purchases under such agreements; and

(iii) Transportation contracts with common carriers for common carrier services, e.g., common carrier transportation services procured by transportation requests, transportation warrants, bills of lading, and similar transportation forms.

(S-70) Contractors and contracts mentioned in FAR 32.617(a) (2) through (5), and other contractors in exceptional circumstances, may be exempted from the administrative interest charges required by this subpart when so agreed by the DoD Contract Finance Committee, with the approval of the Assistant Secretary of Defense (Acquisition and Logistics) or his representative.

232.670 Transfer of responsibility for debt collection.

(a) Transfer of the debt case will be made to the contract financing office upon the expiration of 45 days without full collection after the date of initial demand, whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department. Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility. All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

(b) The transfers required above will not be made for amounts less than $600.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable.

(c) The contract financing office of each military department shall take appropriate actions to effect collection of debts referred to it. This includes administration of deferment agreements; causing debts to be listed on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up List;" to remove names from the "Hold-Up

List;" to determine administrative uncollectability; and to refer debts to the General Accounting Office or the Department of Justice as appropriate. Within each Department, no arrangement for installment or deferral of payments may be made without the approval of the contract financing office. Acting in conformity to the standards stated in this subpart, those offices may approve or deny deferment proposals transmitted to them or made directly to them by contractors, or approve such proposals on prescribed conditions.

(d) Responsibility for assuring effective administration in accordance with this subpart shall be in the Assistant Secretary of Defense (Acquisition and Logistics). Responsibility for effective administration under this subpart in each Department shall be in the Under or Assistant Secretary, or other designated official, responsible for the comptroller function. The DoD Contract Finance Committee shall advise and assist the Assistant Secretary of Defense (Acquisition and Logistics) in assuring proper application of policies and the development of procedures hereunder, and in the formulation of such further instructions on this subject as may appear desirable. That Committee is responsible for this section and will develop and promulgate herein supplemental instructions on this subject.

232.671 Bankruptcy reporting.

For those debts covered by this subpart, claims in bankruptcy, insolvency, or in proceedings for reorganization or rearrangement will be furnished to the Department of Justice. These claims are (a) those which have been transferred to a contract financing office; (b) those on their way to a contract financing office at inception of bankruptcy or insolvency proceedings; (c) those pending and not forwarded to a contract financing office at inception of bankruptcy or insolvency proceedings; and (d) those which are the consequence of bankruptcy or insolvency proceedings. Information on a bankruptcy, insolvency, reorganization or rearrangement will be provided as soon as possible by the office of origin of a debt to that office within a Department designated to receive such information. Proof of claim, with pertinent supporting data and documentation shall be furnished to the Department of Justice by the contract financing office or by such other office as may be designated within a Department. All claims arising under the same contract will be filed by the procuring department which awarded the contract. Information, reports, and proof of claim under this paragraph are not expected on debts of less than $600.

Subpart 232.7—Contract Funding

232.705 Contract clauses.

232.705-2 Clauses for limitation of cost or funds.

(a) When a contract is of the installment type, the clause at FAR 52.232-20, Limitation of Costs, may be appropriately modified.

(c) When a contract is of the installment type, the clause at FAR 52.232-22, Limitation of Funds, may be appropriately modified.

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only DOD contracts for personal services may prohibit the assignment of claims (see FAR 32.806(b) for appropriate clause).

(d) For purposes of DOD contracts, a national emergency is deemed to exist (see 50 U.S.C. 1651(a) (4) and (5)). Nevertheless, when Departments determine it is in the Government's interest, they may exclude the no set-off commitment (Alt. I) in accordance with Departmental procedures.

(e) The assignee shall forward to the administrative contracting officer, disbursing officer, and surety, if any, the notice and instrument of assignment in the number of copies indicated below:

(1) To the administrative contracting officer—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The administrative contracting officer shall acknowledge re-

ceipt by signing and dating all copies of the notice of assignment and shall—

(i) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(ii) Forward two copies of the notice to the disbursing officer designated in the contract to make payment;

(iii) Return a copy of the notice to the assignee; and

(iv) Advise the procuring contracting officer that the assignment has been made.

(2) To the surety or sureties, if any—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee who shall forward two copies to the disbursing officer designated in the contract.

(3) To the disbursing officer designated in the contract to make payment—a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clauses.

(a)(2) When the clause at FAR 52.232-23 is used, the contracting officer shall also insert Alternate I, unless excluded under FAR 32.803(d).

Subpart 232.9—Prompt Payment

232.905 Invoice payment.

(a)(1)(ii) It is expected that in the majority of cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the Prompt Payment clause at FAR 52.232-25(a)(6). However, the contracting officer should coordinate this provision with the Government office that will be responsible for the acceptance or approval function. The contracting officer should specify a longer period where 7 days is not reasonable or practical. Considerations include, but are not limited to, the nature of supplies or services being accepted, inspection and testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A period less than 7 days is not authorized.

(b)(4) It is expected that in the majority of cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the Prompt Payment for Fixed-Price Architect-Engineer Contracts clause at FAR 52-232-26(a)(5). However, the contracting officer should coordinate this provision with the Government office that will be responsible for the acceptance or approval function. The contracting officer should specify a longer period where 7 days is not reasonable or practical. Considerations include, but are not limited to, the nature of supplies or services being accepted, inspection and testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A period less than 7 days is not authorized.

(c)(1) It is expected that in the majority of cases, payment of construction contract progress payments can be made within the 14 days specified in the Prompt Payment for Construction Contracts clause at FAR 52.232-27(a)(1). However, the contracting officer should coordinate this provision with the Government office that will be responsible for the acceptance or approval function. The contracting officer should specify a longer period where 14 days is not reasonable or practical. Considerations include, but are not limited to, the nature of the work, inspection and testing requirements, and resources available at the acceptance activity. A period less than 14 days is not authorized.

(c)(5) It is expected that in the majority of cases, Government acceptance or approval can occur within the 7-day constructive acceptance period specified in the Prompt Payment for Construction Contracts clause at FAR 52.232-27(a)(4). However, the contracting officer should coordinate this provision with the Government office that will be responsible for the acceptance or approval function. The contracting office should specify a longer period where 7 days is not reasonable or practical. Considerations include, but are not limited to, the nature of supplies or services being accepted, inspection and testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A period less than 7 days is not authorized.

[54 FR 20592, May 12, 1989]

232.906 Contract financing payments.

(a) The Department of Defense policy is to make contract financing payments as expeditiously as possible. Generally, the standard due date to be specified by the contracting officer in the Prompt Payment clauses at FAR 52.232-25(b)(2), 52.232-26(b)(2), and 52.232-27(b)(2) is 7 days for progress payments and 14 days for interim payments on cost type contracts. The contracting officer, however, should coordinate payment terms with offices that will be involved in the payment process to ensure that terms specified can be reasonably met. Consideration should be given to geographical separation, workload, contractor ability to submit a proper request, and other factors that could affect timing of payment. Where justified, the contracting officer may specify a due date greater than, but not less than, the standard.

[53 FR 3752, Feb. 9, 1988, as amended at 54 FR 20593, May 12, 1989]

PART 233—PROTESTS, DISPUTES, AND APPEALS

Subpart 233.2—Disputes and Appeals

Sec.
233.204 Policy.
233.210 Contracting officer's authority.
233.213 Obligation to continue performance.
233.214 Contract clause.

Subpart 233.70—Certification Under Section 813 of Pub. L. 95-485

233.7000 Certification of requests for adjustment or relief exceeding $100,000.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46258, Dec. 23, 1986, unless otherwise noted.

Subpart 233.2—Disputes and Appeals

233.204 Policy.

When appropriate, the contracting officer should obtain information on claims previously filed by the contractor with other contracting officers before settling the current claim.

[54 FR 26207, June 22, 1989]

233.210 Contracting officer's authority.

Contracting officer authority under FAR 33.210 is limited by 243.70.

233.213 Obligation to continue performance.

See 233.214 for examples of when Alternate I to the clause at FAR 52.233-1, Disputes, is prescribed.

[53 FR 38181, Sept. 29, 1888]

233.214 Contract clause.

(a) The contracting officer shall use Alternate I to the clause at FAR 52.233-1, Disputes, when acquiring aircraft, spacecraft and launch vehicles, naval vessels, missile systems, tracked combat vehicles, and related electronic systems.

(b) Alternate I may also be used in those contracts or classes of contracts when it has been determined, in accordance with Department procedures, that it is essential because of unusual circumstances in which the performance of a contract may be so vital to the national security or to the public health and welfare that performance must be guaranteed even in the event of a dispute that may be characterized as a claim relating to, as opposed to arising under, the contract. Examples of the types of unusual circumstances when continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons, support systems, and related components other than those listed above, or other essential supplies or services whose timely reprocurement from other sources would be impracticable. The determination to use the Alternate I in other situations shall be made by the head of the contracting activity responsible for the acquisition involved.

[53 FR 38181, Sept. 29, 1988]

Subpart 233.70—Certification Under Section 813 of Pub. L. 95–485

233.7000 Certification of requests for adjustment or relief exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Pub. L. 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Pub. L. 85-804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained at 252.233-7000, Certification of Requests for Adjustment or Relief Exceeding $100,000, shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by FAR 15.804-4.

(c) Section 6(c) of the Contract Disputes Act, Pub. L. 95-563, also requires the certification of claims. The section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

(d) In determining when the dollar thresholds requiring a section 813 certification described above are met, the aggregate amount of both the increased and decreased costs shall be used. (See 215.804-2(a)(1)(ii).)

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 234—MAJOR SYSTEM ACQUISITION

Sec.

234.000 Scope of part.
234.005 General requirements.
234.005-70 Special considerations.
234.005-71 Contract clauses for major systems acquisitions.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46259, Dec. 23, 1986, unless otherwise noted.

234.000 Scope of part.

Department of Defense implementation of OMB Circular A-109, Major System Acquisitions, is contained in DoD Directive 5000.1, Major System Acquisitions, and DoD Instruction 5000.2, Major System Acquisition Procedures.

234.005 General requirements.

234.005-70 Special considerations.

Selected major systems programs will require compliance with several management/contract requirements depending on dollar thresholds and stage of development such as: Design-to-cost/life cycle cost goals, at the contract level in accordance with DoDD 4245.3, Design-to-Cost; system production plans in accordance with DoDD 4245.6, Defense Production Management; test and demonstration requirements in accordance with DoDI 5000.3, Test and Evaluation; cost/schedule control system criteria (C/SCSC) in accordance with DoDI 7000.2, Performance Measurement for Selected Acquisitions; standardization requirements in the engineering design in accordance with DoDI 4120.3, Defense Standardization and Specification Program; and the DoD Parts Control Program in accordance with DoDI 4120.19, DoD Parts Control Program. In conjunction with the DoD Parts Control Program, Military Standard MIL-STD-965, Parts Control Program, identifies the FSC class(es) for which Standardized Military Drawings are to be prepared to document nonstandard parts approved for use in design. See also 219.705-2(d) for special requirements related to evaluation of small disadvantaged business participation. The contracting officer shall include applicable provisions/clauses in solicitations and contracts consistent with the requirements of the specific acquisition.

[51 FR 46259, Dec. 23, 1986, as amended at 53 FR 38175, Sept. 29, 1988; 54 FR 11724, Mar. 22, 1989; 54 FR 26207, June 22, 1989]

234.005-71 Contract clauses for major systems acquisitions.

(a) When compliance with C/SCSC is required, the solicitation and resulting contract shall include the provision at 252.234-7000, Notice of Cost/Schedule Control Systems, and the clause at 252.234-7001, Cost/Schedule Control Systems.

(b) The contracting officer shall include the contract clause at 252.271-7001, "Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data", as provided for in 271.004(a).

[51 FR 46259, Dec. 23, 1986, as amended at 54 FR 11725, Mar. 22, 1989]

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

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Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Source: 51 FR 46259, Dec. 23, 1986, unless otherwise noted.

235.001 Definitions.

The following terms and categories relating to "research and development" are those set forth by the Department of Defense for management of RDT&E programs. However, the term "research and development" as used in this regulation ordinarily encompasses only the Research, Exploratory Development, Advanced Development, Engineering Development, and Operational Systems Development categories below. Generally, it does not cover the management and support category. For example, construction of recreational facilities at an installation used exclusively or generally for research and development would not be acquisition of "research and development" under this regulation. Nevertheless in an exceptional case, depending upon the particular facts, some kinds of work within management and support could be "research and development" within this regulation:

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime result of this type of effort is proof of design concept rather than the development of hardware for service use. Projects in this category have a potential military application.

Engineering development means those projects in full-scale engineering development for Service use but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects and program control will be exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming and planning efforts. It would thus include studies, investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

Management and support means all effort directed toward support of installations or operations required for general research and development use. Included would be military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contract-operated, would be assigned to appropriate projects or as a line item in the Research, Exploratory Development, or Advanced Development Program areas, as appropriate.

Operational system development means those projects still in full-scale engineering development but which have received approval for production through DSARC or other action, or production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line items projects which appear as RDT&E Costs of Weapons Systems Elements in other programs. Program control will thus be exercised by review of the individual projects.

Research means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for (a) subsequent exploratory and advanced developments in Defense related technologies, and (b) new or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

[51 FR 46259, Dec. 23, 1986, as amended at 53 FR 38182, Sept. 29, 1988]

235.003 Policy.

(a) *Use of Contracts.* Grants are authorized under 10 U.S.C. 2358 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense Directives as implemented in Departmental procedures.

(b) *Cost Sharing.* This section provides guidelines for the use of cost sharing type contracts, as defined in FAR 16.303, for research and development type contracts (see FAR 35.003(b)).

(b)(S-70) *Scope.*

(i) These guidelines are applicable to research contracts.

(ii) These guidelines may be applied to development projects (i.e., projects for which the principal purpose is the production of, or design, testing or improvement of, products, materials, devices, systems or methods).

(b)(S-71) *Cost Participation by Contractors.* Contractor contribution to the cost of performing research should be considered unless it is concluded that cost sharing would not be appropriate for one of the following reasons:

(i) The particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor; this would usually include any formal Government request for proposals for a specific project;

(ii) The research effort has only minor relevance to the commercial activities of the contractor, and the organization is proposing to undertake the research primarily as a service to the Government; or

(iii) The contractor has few or no private sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that the Government would have to provide funds through some other means (such as fees) to enable the contractor to cost share. Those contractors predominantly engaged in research and development and having little or no production or other service activities may not be in a favorable position to make a cost contribution.

(iv) When the contractor is an educational institution or nonprofit organization, cost sharing in most cases would not be appropriate in view of their nonprofit status and limited ability to recover cost participation from non-government sources.

(b)(S-72) *Amount of Cost Sharing.* When cost sharing, the amount of cost participation by the contractor may vary in accordance with a number of factors related to the contractor's organization (profit or nonprofit) and the character of the research effort such as the following:

(i) The amount of cost participation by contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise, or competitive position and the value of such enhancement to the contractor (but see subparagraph (v) below).

(ii) If the contractor will not acquire title or the right to use inventions, patents, or technical information resulting from the research project, less contractor cost sharing is appropriate than in cases in which the contractor acquires such rights.

(iii) Less contractor cost sharing is appropriate when an area of research requires special stimulus in the national interest.

(iv) The amount of contractor cost sharing may be reduced to reflect the fact that the organization is foregoing a normal fee or profit on the research.

(v) When an educational institution or nonprofit organization agrees to absorb a portion of the research costs in the expectation of substantial compensating benefits, the amount of sharing should normally be between 1% and 5% of the total contract cost.

(b)(S-73) *Administration.*

(i) Cost participation may be accomplished by a contribution to either direct or indirect costs, provided that such costs would otherwise be allowable in accordance with any cost principles applicable to the contract, and that the costs are not charged to the Government under any other grant or contract.

(ii) The amount of cost participation by a contractor may be determined for each individual research contract or, if the contracting officer desires, for the aggregate of all or some of the contractor's research projects supported by DoD. When the amount of cost sharing is determined for individual projects, the contracting officer may consider the contractor's participation over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another year. If the amount of the contractor's cost sharing is to be determined for the aggregate of all or some of DoD's projects, relatively high contributions on some projects may be offset by relatively low contributions on other projects.

(c) *Recoupment.* The policy and procedures in subpart 235.71 apply with respect to the recovery of nonrecurring costs on commercial sales of defense products and technology. Also, see part 225 for guidance on recovery of nonrecurring research, development, test and evaluation costs when acquisitions are made for foreign military sales customers.

[51 FR 46259, Dec. 23, 1986, as amended at 52 FR 24473, July 1, 1987; 52 FR 28148, July 28, 1987; 53 FR 38238, Sept. 29, 1988]

235.004 Publicizing requirements and expanding research and development sources.

(a) In addition to the requirements of FAR 35.004(a), where the contracting mission warrants it, purchasing activities will use the SF 129 to establish and maintain Research and Development Bidders Mailing Lists.

(2) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns, Historically Black Colleges and Universities (HBCUs), and Minority Institutions (MIs), as defined at Subpart 226.70, for research and/or development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns, HBCUs, amd MIs that are apparently competent to perform research or development work in fields in which the contracting activity is interested. In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's need concerning research and development programs consideration for specific future acquisition actions. Normally, this information shall be provided, as early as practicable, to SBA representatives assigned to a contracting activity and shall cover the Government's requirements for each proposed research and development acquisition exceeding $25,000. To the maximum extent feasible, SBA shall be afforded a minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such acquisitions. Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific acquisition shall be solicited. Exception to the policy of providing SBA a minimum 15 working day interval to recommend additional qualified small research and development sources for a proposed acquisition will be permitted only in those

cases where the head of the contracting activity or the HCA's designated representative advises the SBA representative that such action would result in unjustifiable delay.

(S-70) *Solicitation Mailing Lists.*

(1) Organizations interested in being solicited for research and development procurements will submit applications on SF 129. Such application may be submitted directly to the Department of Defense agencies, activities and installations engaged in the procurement of research and development in scientific and technological fields in which the applicant possesses demonstrable capabilities or actual technical competence.

(2) Annual Reports or Financial Statements may be submitted with the SF 129. Any additional information, such as organizational brochures, folders, flyers, and pictures, should not be provided unless requested by the Government.

(3) To assure retention on research and development solicitation mailing lists, prospective contractors should update information submitted in accordance with this section at least once a year.

[53 FR 5127, Feb. 19, 1988 and 53 FR 20630, June 6, 1988, as amended at 54 FR 20593, May 12, 1989]

235.006 Contracting methods and contract type.

(S-70) *Fixed-Price Type Development Contracts.*

(1) A fixed-price type contract (see FAR 16.201) may be awarded for a development program effort only if:

(i) The level of program risk permits realistic pricing;

(ii) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the United States and the contractor; and

(iii) Prior to award, the contracting officer determines in writing that the criteria in paragraphs (S-70)(1) (i) and (ii) above have been met and that the fixed-price type contract selected is appropriate (but see paragraph (S-70)(2) below).

(2) A firm fixed-price development contract (see FAR 16.202) over $10,000,000 for development of a major system (as defined in FAR 34.001), or a subsystem thereof, may be awarded only if its use is consistent with the criteria in paragraphs (S-70)(1) (i) and (ii) above and a determination authorizing its use is made by the Under Secretary of Defense for Acquisition (USD(A)) or designee.

[54 FR 7429, Feb. 21, 1989]

235.007 Solicitations.

(a) Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances and schedules. Second, it means continuing efforts to increase the number of qualified sources, and to encourage participation by small business concerns, HBCUs and MIs, as well as others, in Defense research and/or development (see also FAR 9.104).

(5) Other relevant factors include review of information obtained as a result of synopsis of the requirement or other advance publicity (FAR 35.004(a)(1)).

(b) In such cases, see FAR 35.007(i). In all acquisitions of (1) research and development in which no small business source was solicited, or (2) research or studies, normally acquired from Higher Education Institutions where no HBCU or MI was solicited, a statement shall be included in the solicitation file setting forth the reasons for not soliciting such sources. Where there is no substantial question as to the choice of the source, as set forth in (b)(2) (i), (ii) and (iii) below, solicitations may be limited to a single source in accordance with FAR part 6:

(i) As a result of thorough evaluation, only one source is found fully qualified to perform the proposed work. (See FAR 6.302-1(b)(1).)

(ii) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source. (See FAR 6.302-1(b)(3).)

(iii) Where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support. (See FAR 6.302-1(b)(7) or FAR 6.302-3(b)(2).)

(g) During the preproposal conference the contracting officer may elect to provide prospective offerors with the Government's estimate of the scientific.

(S-70) 10 U.S.C. 2352 provides that, subject to availability of funds, contracts for services or for the use of facilities for research or development, or both, may be for a term of not more than five years and may be extended for no more than five years.

[51 FR 46259, Dec. 23, 1986, as amended at 53 FR 5128, Feb. 19, 1988 and 53 FR 20630, June 6, 1988; 53 FR 38182, Sept. 29, 1988; 53 FR 50416, Dec. 15, 1988]

235.010 Scientific and technical reports.

(a) Scientific and technical reports record results obtained from and recommendations made on scientific and technical activities relating to a single project, task or contract, or relating to a small group of closely connected efforts within the Department of Defense Research and Development Program. A completed Report Documentation Page (SF 298) is to be included in each copy of a scientific or technical report required by the contract (see FAR Part 53). Whenever a scientific or technical report is required as a product of the Research, Development, Test and Evaluation Effort, the contracting officer will assure that the requirement for a completed SF 298 is clearly stated and that a completed SF 298 is included with each copy of the required scientific and technical report. Further information on the SF 298 can be obtained from the Defense Technical Information Center, Attn: DTIC-HDB, Cameron Station, Alexandria, VA 22304-6145. If the SF 298 is not available, the bibliographic information can be supplied on a separate sheet of paper. Contact DTIC-HDB for further instructions. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government. For the submission of reports in other than paper copy for archival or secondary distribution purposes, contact the Defense Technical Information Center, Attn: DTIC-FDAC, Cameron Station, Alexandria, VA 22304-6145.

(b) Organizations eligible to use DTIC services can register in accordance with Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Scientific and Technical Information which is available from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145. Requirements for eligibility can be obtained from the Defense Technical Information Center, ATTN: DTIC-FDRB, Cameron Station, Alexandria, VA 22304-6145.

[54 FR 53619, Dec. 29, 1989]

235.011 Data.

(a) The data clauses as required by subpart 227.4 usually provide, among other things, for the reproduction and use for any purpose of the Government of any or all of the information to be provided under the contract. Contracting officers shall require contractors to furnish all such information resulting from research and development contracts.

235.014 Government property and title.

(b) The basic requirements to be observed by the Departments for establishing and maintaining control over Government Property are set forth in part 245.

(1) In determining whether to grant the approval to the contractor, the contracting officer shall determine that the proposed acquisition is essential to performance of the contract. Approval may be granted either on a line item basis or for clearly defined classes of items.

(c) Headquarters, Air Force Systems Command (AFSC)(PMPR), Andrews Air Force Base, Maryland 20334, is responsible in the Department of Defense for obtaining and maintaining files of Letters of Assurance from nonprofit institutions of higher education and other nonprofit institutions which provide for the agreement specified in FAR 35.014(c). AFSC(PMPR) will distribute, and periodically update, a list of institutions which furnished a Letter of Assurance. Contracting organizations may request a copy of this list; or at any time, inquire as to whether a particular institution has furnished the required Letter of Assurance. If transfer of title to equipment is contemplated and the contractor has not furnished a Letter of Assurance, the contracting office will request, in writing, that AFSC(PMPR) obtain a Letter of Assurance from the contractor. This request must give the complete mailing address of the contractor.

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.* (2) The responsibility for negotiating Basic Agreements with appropriate educational institutions and nonprofit organizations for DoD, except designated Federal Contract Research Centers (FCRC), is assigned to the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia 22217. Copies of the agreements will be maintained by the Office of Naval Research and provided to DoD and other purchasing activities upon their request. The Office of Naval Research will periodically provide a listing of current Basic Agreements to the DAR Council for publication in a Defense Acquisition Circular. The need for special clauses should not preclude the purchasing office from utilizing these basic agreements. The Basic Agreement is incorporated by reference in Section I contract clauses, of the contract. Special clause requirements may be incorporated into Section H—Special Provisions, of the contract.

(S-70) *Special use allowances for research facilities acquired by educational institutions.*

(1) *Definitions—Research facility* means real property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense; and

Special use allowance means a negotiated direct or indirect allowance for buildings, structures, and real property, other than land, computed at an annual rate in excess of the rate which normally would be allowed under FAR Subpart 31.3.

(2) *Policy.* The expanding requirements of the Department of Defense for the performance of scientific research programs by educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities required for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in FAR Subpart 31.3. However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given Governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential governmental research programs to go forward. The resort to special use allowances as provided by this paragraph is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

(3) *Authorization of special use allowances.* The head of a contracting activity may approve special use allowances for the acquisition or construction costs of research facilities financed by educational institutions only when all of the following conditions are met:

(i) The research facility is essential to the performance of Department of Defense contracts;

(ii) The program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government;

(iii) The proposed agreement for the special use allowances represents a sound business arrangement;

(iv) It is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research; and

(v) The proposed use of the research facility is in consonance with the underlying objective of the Government in granting the special use allowance.

(4) *Negotiation and administration of contracts providing for special use allowances.* The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in (i) through (xiii) below:

(i) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(ii) When the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. When the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with FAR subpart 31.3 may be applied thereafter to the balance.

(iii) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than that which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in (3) above.

(iv) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(v) When more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(vi) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(vii) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(viii) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(ix) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the contract. However, equitable adjustments may be made in the special use allowance during the construction period if the research facility is partially used for research under the contract.

(x) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(xi) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(xii) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(xiii) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in (3) and to the Deputy Under Secretary (Research and Advanced Technology), Office of the Under Secretary of Defense for Research and Engineering.

235.016 Broad agency announcements.

(a)(S-70) *Partial Set-Asides for HBCUs and MIs Under Broad Agency Announcements.* To facilitate achievement of the goals established by section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180 (see 226.7003), whenever practicable, contracting officers shall reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among HBCU and MI entities, and so indicate in the announcement synopsis (see 205.207(d)(S-76)) and within the BAA. Decisions not to reserve such requirements for HBCUs and MIs shall be documented in the contract file (see 235.007(b)(1). Prior to award, the contracting officer shall obtain a certification from the successful offeror as to its status as an HBCU/MI (see 252.226-7001).

[53 FR 5128, Feb. 19, 1988, as amended at 53 FR 20630, June 6, 1988]

235.070 Indemnification against unusually hazardous risks.

(a) *Indemnification under research and development contracts.* (1) *Use of clause.* Pursuant to the authority of 10 U.S.C. 2354 and when authorized by the Secretary concerned (or designee under 10 U.S.C. 2356), a contract for research and development, or both, may provide for indemnification of the contractor and subcontractors against:

(i) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(ii) Loss of or damage to the contractor's property, to the extent that such liability, loss or damage—

(A) Results from a risk that the contract defines as "unusually hazardous",

(B) Arises out of the direct performance of the contract, and

(C) Is not compensated by insurance or otherwise. When authorization has been obtained, the appropriate clause prescribed in 235.071 (a) or (b) shall be used.

(2) Each contract containing a clause authorized by (a) above shall clearly define the specific unusually hazardous risks to which the clause applies. This definition shall be submitted for approval with the request for authorization to grant indemnification. The definition may be included as an additional paragraph of the clause or inserted elsewhere in the contract. The fact that one or more risks under a contract may be appropriately defined as unusually hazardous does not justify so defining other risks of contract performance which are not in themselves unusually hazardous; neither does it preclude indemnification of such other risks under other appropriate authority.

(b) *Indemnification under contracts involving both research and development and work that cannot be so classified.* Certain contracts require a substantial amount of research and development work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85-804 may be used. In such cases, the use of Pub. L. 85-804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with the provisions of FAR subpart 50.4.

235.071 Contract clauses.

(a) The contracting officer shall insert the clause at 252.235-7000, Indemnification Under 10 U.S.C. 2354—Fixed Price, as provided for in 235.070.

(b) The contracting officer shall insert the clause at 252.235-7001, Indemnification Under 10 U.S.C. 2354—Cost Reimbursement, as provided for in 235.070.

(c) The contracting officer shall insert the clause at 252.271-7001, Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology and of Royalty Fees for Use of DoD Technical Data, as provided for in 271.004(a).

(d) The contracting officer shall insert the clause at 252.235-7003, Care of Laboratory Animals, in all contracts in compliance with law and in furtherance of the Department of Defense policy that all aspects of investigative programs involving the use of experimental or laboratory animals be humanely conducted in accordance with recognized principles. The clause shall be included in all contracts awarded in the United States, its possessions, and Puerto Rico which may involve the use of such animals.

(e) The contracting officer shall insert the clause at 252.235-7004, Frequency Authorization, in any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

[51 FR 46259, Dec. 23, 1986, as amended at 53 FR 38182, Sept. 29, 1988; 54 FR 11725, Mar. 22, 1989]

Subpart 235.70—Short Form Research Contract

235.7000 Scope of subpart.

This subpart prescribes procedures for contracting for research on a cost-reimbursement basis with educational institutions or nonprofit organizations within the United States whose primary purpose is the conduct of scientific research.

[51 FR 46259, Dec. 23, 1986, as amended at 54 FR 11725, Mar. 22, 1989]

235.7001 Definitions.

(a) Educational institution means an institution of higher learning providing facilities for teaching and research and authorized to grant academic degrees.

(b) Nonprofit organization—organizations of the type described in section 501 (c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific organization qualified under a state nonprofit organization statute.

(c) Research includes all effort described as research in 235.001 including that part of exploratory development applicable to applied research.

235.7002 Applicability.

(a) The procedures contained in this subpart may be used for contracting:

(1) Whenever the principal purpose is the acquisition of research from an educational institution or a nonprofit organization;

(2) When the work is to be accomplished on a cost-reimbursement basis;

(3) When the basis for award is either:

(i) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(ii) An unsolicited research proposal (FAR 6.302-1); or

(iii) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302-3); and

(4) When the contract requires the delivery of designs, drawings or reports as end items.

(b) When the circumstances in (a) above are present, the Short Form Research Contract (SFRC) may be used. The SFRC shall not be used for any purpose other than as described herein.

[51 FR 46259, Dec. 23, 1986, as amended at 54 FR 11725, Mar. 22, 1989]

235.7003 Content of research proposals.

Research proposals submitted for award in accordance with these procedures shall contain all the information in FAR 15.505. A contract may be awarded on the basis of the proposal exactly as submitted or as subsequently amended by the offeror, if the proposal contains the information listed in (a) through (h) below:

(a) In addition to the information identified in FAR 15.505(b), a statement of work in accordance with 235.005 and FAR 35.005 and a breakdown of the time, identifying man-days, man-months or man-years to be devoted to the contract by the principal investigator and any associates (see FAR 35.015(a)). A separate work statement which can be incorporated by reference in the SFRC is preferred.

(b) In addition to information identified in FAR 15.505(c), the following executed representations and certifications on DD Form 2222-1:

(1) Organizational Conflicts of Interest—FAR 15.505(c)(6);

(2) Contingent Fee Representation and Agreement—FAR 52.203-4;

(3) Certification of Nonsegregated Facilities—FAR 52.222-21;

(4) Previous Contracts and Compliance Reports—FAR 52.222-22;

(5) Affirmative Action Compliance—FAR 52.222-25;

(6) Clean Air and Water Certification (if proposal exceeds $100,000) in FAR 52.223-1;

(7) Insurance—Immunity From Tort Liability—FAR 52.228-7.

Offerors may elect to submit the representations and certifications on a one-time basis to each contracting office. Such representations and certifications would be valid for all SFRC contract awards, *Provided*, for each proposal submitted, the offeror references the submission and confirms in writing its validity for the research proposal.

(c) A statement that the Government may award a contract in accordance with the procedures of this subpart 235.70 as applicable.

(d) Identification of property, as defined in 252.235-7005 showing, when possible, the description or title and estimated or known cost of each item. For facilities only (FAR 45.301), the offeror must include a statement as to why it is necessary to acquire these items with contract funds and express in writing the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources. When special test equipment or components are proposed, individual items of less than $1,000 may be grouped by category (FAR 45.307-2). The description or title of all property for which contract funds are requested should be in sufficient detail to enable the contracting officer to:

(1) Determine whether or not the Government will furnish such property, pursuant to 235.014, FAR 35.014 and FAR 45.302-1; and

(2) For property which may be contractor-acquired (versus Government-furnished)—

(i) Accept it as advance notification required by FAR 52.244-2; and

(ii) Authorize acquisition at the time of award.

(e) A Contract Pricing Proposal Cover Sheet (SF 1411) or acceptable substitute. Information for subcontracts listed in FAR 52.244-2, subparagraph (b), shall be as prescribed by that subparagraph.

(f) If the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation, the offeror shall mark the title page and each restricted sheet as prescribed by FAR 15.509. If the offeror grants permission to the Government to have non-government evaluators review the offeror's proposal, the offeror should either make this statement in the offer or check block A on page 2 of the DD Form 2222-2.

(g) The offeror's proposal shall include the following statement:

> This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 252.235-7005 in effect on the effective date of the contract or such other date as may be mutually agreed upon.

(h) The parties may also incorporate, by mutual consent, any other FAR or DFARS clauses which are determined to be applicable because of the nature of the particular acquisition.

[51 FR 46259, Dec. 23, 1986, as amended at 54 FR 11725, Mar. 22, 1989]

235.7004 Contracting procedures.

(a) The contracting officer may award a Short Form Research Contract (SFRC) under full and open competition procedures of FAR subpart 6.1 when it is based on a proposal which was submitted in response to a broad agency announcement under FAR 6.102(d)(2), contains the information required by 235.7003, and has been recommended for award under the peer or scientific review procedures of FAR 6.102(d)(2).

(b) Contracts resulting from unsolicited proposals may be effected by using the procedures in either (c) or (d) below, as appropriate.

(c) The contracting officer may award an SFRC under the procedures of FAR subpart 6.3 for other than fulll and open competition when—

(1) It is based on an unsolicited research proposal that meets the criteria of FAR 6.302-1 and has been submitted, evaluated, and accepted under the policies and procedures of FAR subpart 15.5 and 215.5; or

(2) Pursuant to FAR 6.302-3, it is necessary to award a contract to establish or maintain an essential engineering research or development capability.

(d) When the research proposal is satisfactory to the Government, the proposal should be accepted by the contracting officer and a contract formed by incorporating the entire proposal by reference, or by incorporating the statement of work by reference and executing the SFRC.

(e) When acceptance of the entire proposal is not considered advantageous to the Government, the contracting officer should use such parts of the research proposal as are considered appropriate, either by actual attachment or incorporation by reference, to develop a contract for execution by both parties. In this event, the SFRC shall be executed by the contractor prior to signature by the government.

(f) Modifications shall be effected by use of the DD Form 2222.

(g) The offeror may offer options to the Government or the parties may agree to options to conduct research effort beyond the initial research program proposed. The initial dollar amount and period of performance specified at the time of award shall not include the cost and period of the options. The cost and period of such options shall be separately identified. The option may be exercised by the government by unilateral modification of the contract.

(h) The policy and background regarding vesting of title in property to organizations defined in 235.7001 are set forth in 235.014 and FAR 35.014. Title to property which is not vested in the contractor or for which the determination regarding vesting of title is deferred shall be identified in the DD Form 2222.

(i) By submission of the offeror's proposal pursuant to this subpart 235.70, the offeror must agree to be bound by all terms and conditions of the resulting contract.

[51 FR 46259, Dec. 23, 1986, as amended at 54 FR 11725, Mar. 22, 1989]

235.7005 Advance payments.

SFRCs awarded to institutions and organizations authorized to receive advance payments in accordance with subpart 232.4 and FAR subpart 32.4, shall be clearly marked to read "ADVANCE PAYMENT POOL CONTRACT PURSUANT TO ATTACHED PAYMENT PROVISION".

235.7006 Methods of funding.

SFRCs may be fully or incrementally funded in accordance with departmental procedures. If incrementally funded, the SFRC shall specify the total estimated cost for the full period of the research program, both funded or unfunded, and the amount of funds currently obligated. For the purpose of establishing the period covered by the incremental funds available, the funds available will be prorated by dividing the number of months into the dollars available. If this method is not acceptable, the offeror shall specify an alternate method of establishing the time period.

235.7007 Proposal format.

Contractors are encouraged to use DD Form 2222-2 in the submission of research proposals for SFRC awards. Use of this format will promote consistency in award procedures among DoD funding agencies and expedite the award of the SFRC.

235.7008 SFRC clauses.

(a) The clauses in 252.235-7005 are applicable to all SFRC awards of $25,000 or more as of the effective date of the contract, unless such date is modified by mutual agreement. Such modification may be included in the offeror's proposal or may be specifically identified in the contract document. Inclusion of the change in the contract document will necessitate execution of the contract by the signature of both contracting parties.

(b) Uniform contract clauses to be used in Short Form Research Contracts (SFRCs) with educational institutions and other nonprofit organizations are set forth in 252.235-7005.

(c) For purposes of this subpart, "contract action" is defined as the amount of the initial contract or the amount of a modification for new procurement to the contract. It does not include the amount of any unexercised options.

(d) Clauses specified in 252.235-7005 are considered part of the General Provisions of an SFRC unless inapplicable in accordance with the conditions set forth at the clause citation.

(e) SFRC awards of less than $25,000 shall identify the clauses in 252.235-7005 which are applicable when the contract amount is under $25,000.

[51 FR 46259, Dec. 23, 1986, as amended at 54 FR 11725, Mar. 22, 1989]

235.7009 Price negotiation memorandum.

The price negotiation memorandum (FAR/DFARS 15.808) shall include information necessary for appropriate contract administration. Included, for example, will be a statement as to whether FAR clause 52.215-30 or 52.215-31 is applicable (Facilities Capital Cost of Money clauses).

235.7010 Uniform contract format.

The Short Form Research Contract is exempt from Uniform Contract Format requirements as specified in FAR 15.406.

[54 FR 11725, Mar. 22, 1989]

Subpart 235.71—[Reserved]

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202 DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46267, Dec. 23, 1986, unless otherwise noted.

Subpart 236.1—General

236.102 Definitions.

Construction Activity means an activity, at any organizational level of the Military Departments, which has responsibility for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities, and which receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

236.103 Methods of contracting.

(a) Overseas construction may be acquired by means of sealed bidding provided that the Head of a Contracting Activity, or designee, determines that the use of sealed bidding, in strict accordance with FAR part 14, is practicable and advantageous to the United States as to a specific country or other geographic area outside the United States, its possessions, and Puerto Rico.

236.170 Sources of construction services.

Generally, military construction in the United States shall be performed by contract. The following exceptions to this policy are authorized:

(a) Military construction units, other military personnel and Civil Service maintenance personnel may:

(1) Perform construction in periods of emergency arising from fire, flood, explosion, pestilence or other disaster to provide essential facilities for shelter, safety, and protection of personnel and property;

(2) Perform construction where the isolated location of the work makes it impracticable to obtain qualified contractors:

(3) Perform construction where the necessity for obtaining security clearances for contractor personnel introduces unacceptable delays in operational schedules.

(b) Military construction units may perform construction in addition to that set forth in (a) above, but only when the integrity of the unit will be maintained and the project will contribute to the training of the unit for its war-time mission.

(c) Military personnel, other than military construction units, may, in addition to (a), above:

(1) Perform construction in connection with welfare and recreational facilities intended for their own use;

(2) Perform repair incident to maintenance—

(i) When required for reasons of security;

(ii) For disciplinary action arising from military offenses;

(iii) For training and maintaining competence in recognized trade skills;

(iv) In and around the barracks which they themselves occupy or are about to occupy.

(d) Civil service maintenance forces may, in addition to (a), above:

(1) Perform construction where the work is of a minor nature;

(2) Perform construction where conditions are such that it is impracticable to prepare plans and specifications;

(3) Perform construction where the work must be performed intermittently to avoid disrupting other important operations;

(4) Perform repair incident to maintenance.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(1)(S-70) Place the Contractor Establishment Code (formerly referred to as the DUNS number)' from Item B5A of the DD 350 in Block 2 of SF 1420.

(S-71) Place the telephone number of the Government office which will retain the official record copy of the report in Block 5 of SF 1420.

(c) *Distribution and use of performance reports.* (1) Each performance report will be forwarded to the central data base after completing the review. The central data base, set forth below, will retain reports for six years. HQUSACE, CEPR, is responsible for establishing procedures and practices which will assure appropriate distribution and utilization of performance evaluation data within the Defense Department.

(2) The central automated data base containing performance evaluation information on DOD construction contractors is available to all DOD construction activities.

The centralized data base is maintained at: U.S. Army Engineer Division, North Pacific, ATTN: CENPD-CT, P.O. Box 2870, Portland, OR 97208-2870, Telephone: (503) 326-3459/4910.

Computer access to these files can be made available by contacting North Pacific Division to obtain user logon and procedure instructions.

(3) Performance evaluations of construction contractors shall be used in making responsibility determinations. Before selecting fully qualified responsible contractors for future awards or negotiation of construction contracts above $1 million, the contracting officers should retrieve from the central data base all performance evaluations on file pertaining to prospective contractors. The central data base provides overall ratings, contract description, value, performance elements and a telephone number where transcripts of the remarks and documentation, usually appended to unsatisfactory or outstanding evaluations, may be obtained. Contracting activities with telecommunication capability can retrieve information from the central data base by remote terminal. The central data base may be used to obtain performance information for anticipated contracts regardless of contract amount or for other purposes.

[51 FR 46267, Dec. 23, 1986, as amended at 53 FR 38175, Sept. 29, 1988; 54 FR 30746, July 24, 1989]

236.203 Government estimate of construction costs.

(c) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below. If the acquisition is by sealed bidding (except two-step sealed bidding) a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

236.206 Liquidated damages.

A liquidated damages clause shall be included in all contracts in excess of $500,000 except cost-plus-fixed-fee contracts or those where the contractor cannot control the pace of the work. Use of a liquidated damages clause is optional for contracts of $500,000 or less. Where such a provision is used, the clause set forth in FAR 52.212-5 shall be included in the invitation for bids or request for proposals. Where different completion dates for separate parts or stages of the work are specified in the contract, this clause should be revised appropriately to provide for liquidated damages for delay of each separate part or stage of the work. The minimum amount of liquidated damages should be based on the estimated cost of inspection and superintendence for each day of delay in completion. Whenever the Government will suffer other specific losses due to the failure of the contractor to complete the work on time, such as the cost of substitute facilities, the rental of buildings, or the continued payment of quarters allowances, an amount for such items should also be included.

[51 FR 46267, Dec. 23, 1989, as amended at 54 FR 30746, July 24, 1989]

236.270 Minimum standards for responsible prospective contractors.

In evaluating the responsibility of a prospective contractor, the contracting officer shall consider whether a bid bond has been furnished and performance and payment bonds are to be furnished. Prior to underwriting bid performance and payment bonds, it is normal practice for each surety company to conduct a prequalification survey which examines, verifies and evaluates the contractor's financial resources, technical expertise for the type work involved, management and organization ability, current workload, and capability to complete the contract in the required time. Normally, the contracting officer is not expected to duplicate this effort in conducting the pre-award survey, but should emphasize in addition thereto the evaluation of information which is uniquely available to the Government, such as the Consolidated List of Debarred, Suspended, and Ineligible Contractors (see FAR 9.404), contractor experience lists, and performance evaluations on present or previous contracts with the Government. More extensive pre-award surveys should be conducted when the project requires unique or unusual construction expertise or when information available to the contracting officer indicates that the contractor may not be responsible (see FAR 9.104). The responsibility for determination of the extent of pre-award survey appropriate to the circumstances rests with the contracting officer. Where the prospective contractor is a joint venture, the sum of its financial resources and the individual capacities of all its members will be used in determining the responsibility of the joint venture.

236.271 Expediting construction contracts.

Approval by the head of the Agency (on a non-delegable basis) is required to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. The approval authority must (1) certify that the additional expenditures are necessary to protect the National interest and (2) establish a reasonable completion date for the project. The contracting officer may approve an expedited completion date if no additional costs are involved.

236.272 Cost-plus-fixed fee contracts.

Annual Military Construction Appropriation Acts provide that cost-plus-fixed-fee construction and architect-engineer contracts estimated to exceed $25,000 to be performed within the United States, except Alaska, and to be charged to such appropriations shall not be executed unless the specific written approval of the Assistant Secretary of Defense (A&L), setting forth the reasons therefore, is obtained.

[51 FR 46267, Dec. 23, 1989, as amended at 54 FR 30746, July 24, 1989]

236.273 Prequalification of bidders and offerors.

(a) The prequalification procedures are used when it is necessary to assure timely and efficient performance of critical construction projects by limiting bidding or offers to concerns of proven competence to perform in the required manner. The result of a prequalification is a list of sources determined to be qualified to perform a specific construction contract.

(b) The Head of a Contracting Activity (HCA) may authorize the prequalification when the HCA determines in writing that a construction project is of such urgency or complexity as to require prequalification.

(c) Procedures to be used shall be approved by the Head of a Contracting Activity. They shall provide, in connection with small business concerns, that:

(1) If the qualifying authority is of the opinion that a small business concern is not qualified for reasons relating to responsibility, the recommendation of the appropriate Small Business Regional Office shall be requested;

(2) If the office expresses the opinion that the concern appears to have the requisite responsibility, it shall be permitted to submit a bid or offer, and

(3) If a small business concern is found to be non-responsible, the procedures prescribed by FAR 19.6 shall be followed.

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitation for bids.

(c)(S-70) The Cost Limitations provision (see 236.580-1 and 252.236-7081).

(S-70) If it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the solicitation for a first or base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the solicitation shall include a provision substantially as prescribed at 236.580-2, and the low bidder and the bid items to be awarded shall be determined as therein provided. The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder but may be increased for determining the bid items to be awarded to the low bidder; *Provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.402 Price negotiation.

(S-70) *Profit or fee for cost-reimbursement type construction contracts.* (1) The fees of prime contractors under cost-plus-fixed-fee construction contracts shall be negotiated in accordance with Departmental procedures which have been approved by the Assistant Secretary of Defense (A&L).

(2) The target fee of prime contractors in incentive fee contracts shall be established using the criteria and fee schedules provided for under Departmental procedures as a guide in conjunction with the reasonableness of the target cost, the maximum and minimum fees to be established and the fee adjustment formula.

[51 FR 46267, Dec. 23, 1986, as amended at 53 FR 38195, Sept. 29, 1988; 54 FR 30746, July 24, 1989]

Subpart 236.5—Contract Clauses

236.501 Performance of work by the contractor.

(a) The contractor shall be required to perform not less than 15 percent on housing and not less than 20 percent on other work.

236.513 Accident prevention.

(S-70) When the circumstances arise for using either the Accident Prevention clause or the Alternate I prescribed at FAR 36.513, the contracting officer shall insert the clause at 252.236-7019 or its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated and technical representatives advise that special precautions are appropriate. The contracting officer should inform OSHA, or other cognizant Federal, state, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

[54 FR 30746, July 24, 1989]

236.570 Additional clauses.

Sections 236.571 through 236.574 present additional clauses for insertion in contracts for construction and architect-engineer services.

236.571 Clauses.

The following clauses are required in fixed-price construction contracts and solicitations:

236.571-1 Composition of contractor.

The contracting officer shall insert the clause at 252.236-7000, Composition of Contractor, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571-2 Modification proposals—price breakdown.

The contracting officer shall insert the clause at 252.236-7001, Modification of Proposals—Price Breakdown, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.571-3 Contract drawings, maps and specifications.

The contracting officer shall insert the clause at 252.236-7002, Contract Drawings, Maps and Specifications, in solicitations and contracts when a fixed-price construction contract is contemplated.

236.572 Clauses.

The following clauses will be inserted in fixed-price construction contracts and solicitations as set forth below:

236.572-1 Contract prices—bidding schedule.

The contracting officer shall insert the clause at 252.236-7004, Contract Prices—Bidding Schedule, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract is to contain only unit prices for specified items.

236.572-2 Salvage materials and equipment.

The contracting officer shall insert the clause at 252.236-7005, Salvage Materials and Equipment, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve Government furnished property which is to be salvaged and reused.

236.572-3 Misplaced material.

The contracting officer shall insert the clause at 252.236-7006, Misplaced Material, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will involve work near or on navigable waterways.

236.572-4 [Reserved]

236.572-5 Superintendence of subcontractors.

The contracting officer shall insert the clause at 252.236-7008, Superintendence of Subcontractors, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract will be for work of a highly technical and complicated nature requiring extraordinary control by the contractor of the several parts of the work, or the contract will cover work spread over several places on the site of work.

236.572-6 Payment for mobilization and preparatory work.

The contracting officer shall insert one of the clauses at 252.236-7009, (see below) in solicitations and contracts when a fixed-price construction contract is contemplated which will contain a separate bid item for mobilization and preparatory work with the approval of the Head of the Contracting Activity.

(a) In major construction contracts requiring major or special items of plant and equipment or large stockpiles of material which are considered to be in excess of the type, kind and quantity presumed to be normal equipment of a contractor qualified to undertake the work, insert the clause at 252.236-7009(a), Payment for Mobilization and Preparatory Work, Payment Item No. _____.

(b) In contracts involving major mobilization expense or plant equipment and material other than such as are covered in (a) above, which is occasioned by the location or nature of the work, insert the clause at 252.236-7009(b), Mobilization and Demobilization, Payment Item No. _____.

(c) The percentage of the lump sum price, for mobilization and demobilization in paragraph (a) of the clause at 252.236-7009(b), attributed to mobilization should generally be 60% and the remaining 40% considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplated under the particular contract, but in no event should mobilization exceed 80% of the payment item.

236.572-7 [Reserved]

236.572-8 Airfield safety precautions.

The contracting officer shall insert the clause at 252.236-7011, "Airfield Safety Precautions," in solicitations and contracts when a fixed-price construction contract is contemplated which is to be performed on or near airfields.

236.572-9 Contractor prepared network analysis system.

(a) The contracting officer is authorized to insert a clause substantially as set forth at 252.236-7012, "Contractor Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the instructions in (b) below. Since the clause is broad in scope, modifications thereto will be necessary to accommodate individual project requirements.

(b)(1) (See paragraph (b)(2).) The requirements pertaining to the identification of separate buildings and features and to the minimum number of activities may be deleted for projects where this information is not needed. This portion should always be used when more than one line item is being contracted for under a single contract to provide data for Government costing purposes. The column showing the minimum number of activities per building or feature may be deleted if not considered necessary.

(2) (See paragraph (b)(3).) The requirement for time scaling the summary network diagram may be deleted. The use of time scaling provides a more easily comprehended diagram for those not intimately familiar with a project and hence is of value to higher level management. It is also of considerable value for evaluating the utilization of resources of manpower and equipment and the scheduling of those activities which have slack available. On the other hand, revisions are much more difficult to make on time scaled diagrams requiring considerable, if not complete, redrafting. This makes time scaling more expensive to maintain and may result in delays in submitting diagrams. The advantages to management, as against the possibility of additional cost and delay in submission, must be considered in deciding whether time scaling should be included. If time scaling is omitted, references thereto in paragraph (e) should also be deleted.

(3) (See paragraphs (b)(4) and (b)(7).) Any items may be included or deleted as project requirements and local computer capabilities indicate. It should be noted that many computer system programs are written so as to provide only part of the information listed, and it is probable that there is no single program which will provide all the needed information. The listings should be revised to require only the minimum information necessary for project management.

(4) (See paragraph (b)(6)(i).) Two means of estimating the computing time required can be used, (i) based on normal work days (excluding Saturdays, Sundays and holidays), or (ii) based on calendar days. This paragraph should be retained if the former method is to be used. If the latter method is to be used, this paragraph

should be deleted and the following inserted at the end of paragraph (b)(2):

In calculating activity durations, Saturdays, Sundays, holidays, and normal inclement weather should be considered.

(5) (See paragraph (b)(6) (ii) and (iii).). Requirements for manpower loading and list of equipment will be deleted unless the nature of the project is such as to make their inclusion necessary for proper surveillance by the resident engineer. When these requirements are deleted here, references thereto in other sections should also be deleted.

(6) (See paragraph (c).) The times allowed for the various submissions may be revised to fit individual project requirements based on project duration and complexity.

(7) (See paragraph (e).) The time for submission of periodic reports may be changed based on project requirements. Normally, reports will be required twice a month with payments made once a month based on the work shown as accomplished in the last two reports.

(8) (See paragraph (f).) For partially completed activities, a relatively broad estimate of the portion completed is normally adequate, for example, 25%, 50%, 75% or 100%, and the clause may be changed accordingly. Due to the multiplicity of activities and their normally small dollar value, a more precise evaluation frequently may be impractical. On activities with significant costs, a more precise estimate should be used.

(9) (See paragraphs (g), (h) and (i).) The sheet size of diagrams and number of copies of report to be submitted may be revised to suit individual project requirements.

236.572-10 Government-prepared network analysis system.

The contracting officer is authorized to insert the clause at 252.236-7013, "Government-Prepared Network Analysis System," in solicitations and contracts when a fixed-price construction contract is contemplated in accordance with the following instructions:

(a) (See paragraph (a).) This paragraph shall be used when the project is of long duration and a schedule of the first two months' operation is necessary for controlling the project until the "Construction Progress Schedule" is submitted. The blank will be filled in with the number of days desired. This paragraph will be deleted when the construction project is of short duration.

(b) (See paragraph (b).) Proper number of days for submittals shall be inserted by the contracting officer.

(c) Paragraphs (c)(1) and (c)(2) shall be modified to agree with detail and type of network analysis system the Government proposes to prepare.

236.573 Clauses.

The following clauses are required in cost reimbursement construction contracts and solicitations:

236.573-1 Statement of work.

The contracting officer shall insert the clause at 252.236-7014, Statement of Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-2 [Reserved]

236.573-3 Direct payments.

The contracting officer shall insert the clause at 252.236-7016, Direct Payments, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.573-4 Approved construction plant.

The contracting officer shall insert the clause at 252.236-7017, Approved Construction Plant, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

236.574 Option for supervision and inspection services.

The contracting officer shall insert the clause at 252.236-7018, Option for Supervision and Inspection Services, in solicitations and contracts when a fixed-price architect-engineer contract is contemplated, and supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

236.580 Solicitation provisions.

This section prescribes additional solicitation provisions applicable only to construction contracting.

236.580-1 Cost limitations.

The contracting officer shall insert the provision at 252.236-7081, Cost Limitations, if the solicitation contains one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

236.580-2 Additive or deductive items.

The contracting officer shall insert the provision at 252.236-7082, Additive or Deductive Items, under the conditions set forth at 236.303(S-70).

Subpart 236.6—Architect-Engineer Services

236.600 Scope of subpart.

Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set-aside for small business. Those under $85,000 shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of FAR Subpart 19.505 shall apply.

236.601 Policy.

(S-70) For contract actions with an estimated total fee of $300,000 or over and which require notification to Congress in accordance with 10 U.S.C. 2807, no funds shall be obligated until 21 days after Congress has been notified. During the notification waiting period, synopsis of the proposed contract action and administrative actions leading to the procurement of the architect-engineer services may be started.

236.602 Selection of firms for architect-engineer contracts.

236.602-1 Selection criteria.

(a)(6) The volume of work previously awarded to the firm by the Department of Defense shall also be considered, with the object of effecting an equitable distribution of Department of Defense architect-engineer contracts among qualified architect-engineer firms, including small and small disadvantaged business firms, and firms that have not had prior Department of Defense contracts.

(S-70) Criteria which will be used to evaluate the qualifications of the architect-engineer firms to be considered should be established in advance. In addition to the general considerations listed in FAR 36.601, the criteria should be specific as to desired qualifications, size and expertise of staff, required past experience, and, as appropriate, esthetic considerations, special conceptual or design elements, and related factors. The information contained in the DD Form 1391 for the construction project, if applicable, should be used in preparing the criteria. The criteria shall be set forth in the public announcement as required by FAR 5.205(c).

[51 FR 46267, Dec. 23, 1989, as amended at 54 FR 30746, July 24, 1989]

236.602-2 Evaluation boards.

(a) Preselection boards are authorized. A preselection list of the maximum practicable number of qualified firms shall be prepared by a preselection board from data described in FAR 36.603 and other pertinent information which may be available, and the list shall be approved by the head of the construction activity, or his designee. Preparation of preselection lists for contracts estimated to cost more than $25,000, shall be accomplished by formally constituted boards consisting of at least three members.

236.602-4 Selection authority.

(a) All selection actions, including preselection, shall be under the cognizance of the construction activity responsible for the work.

(c) A finding that certain firms on the selection report are unqualified shall not preclude approval of the report provided that a minimum of three firms remain. In such cases the reasons for finding a firm or firms unqualified shall be recorded and reports may be approved with respect to the three or more qualified firms remaining.

(S-70) *Special approval of selections.* Special approval shall be required for certain selections as indicated below:

(1) When the estimated cost of a contract to be awarded by a field activity exceeds $500,000, the selection shall require the approval of the next higher organizational level of the construction activity;

(2) When a firm, to which a field contracting office has previously awarded contracts totaling over $500,000 during the current calendar year, has been selected for an additional award to be made by the same contracting office, the selection shall require, prior to negotiation with the firm, the approval of the next higher organizational level of the construction activity;

(3) When a selection is made by the Army Corps of Engineers, the Naval Facilities Engineering Command, or the Air Force Directorate of Civil Engineering for a contract whose estimated cost is $500,000 or more, the selection shall require the approval of the Chief of Engineers, the Commander, Naval Facilities Engineering Command, or the Director of Civil Engineering, respectively, or their respective designee;

(4) When supplemental work to be added to an existing contract will bring the total contract cost to any of the various levels of approval noted above, the selection for such work shall require approval as indicated for the appropriate level (such approval is not required for supplemental work accomplished pursuant to the Changes clause of the contract); and

(5) When approval of a selection for a contract has been obtained at a particular approval level, further approval shall not be required for the selection of the same firm to accomplish supplemental work under that contract, unless the total cost of the basic contract plus all supplemental work is an amount requiring approval of the selection at the next higher approval level.

[51 FR 46267, Dec. 23, 1986, as amended at 53 FR 38195, Sept. 29, 1988]

236.604 Performance evaluation.

(a) *Preparation of performance reports.*

(1) The SF 1421 shall be filed and utilized in a manner similar to the SF 254, Architect-Engineer and Related Services Questionnaire.

(2) A separate report shall be prepared after completion of the actual construction of the project. Ordinarily, the evaluating official who prepares the after construction report should be the person most familiar with the architect-engineer's performance.

(c) *Distribution and use of performance reports.* Each performance report will be forwarded to the central data base after completing the review. The central data base is identified in 236.201(c). The procedures in that paragraph also apply to architect-engineer performance reports.

[54 FR 30746, July 24, 1989]

236.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared for each proposed contract or contract modification expected to exceed $10,000.

236.606 Negotiations.

(S-70) [Reserved]

(S-71) In no event shall a contract for architect-engineer services for the preparation of designs, plans, drawings and specifications exceed the statutory limitation of six percent (6%) of the estimated construction costs of the project. If the contract also covers any other type services than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6%) limitation.

(S-72) *Modifications.* Where the modification involves work not initially included in the contract, the limitation on the total contract price set forth in 236.606-71 is applicable, as applied to the revised total estimated construction costs. Where redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6%) statutory limitation is not exceeded:

(1) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(2) The contract cost for the original design will be added to the contract cost for redesign; and

(3) The total contract design cost obtained by (2) above will be divided by the total construction cost obtained by (1) above. The resulting percentage may not exceed the six percent (6%) statutory limitation.

[51 FR 46267, Dec. 23, 1986, as amended at 53 FR 38195, Sept. 29, 1988]

Subpart 236.7—Standard Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Optional Forms 347 and 348 are not authorized for use in the Department of Defense (see 213.505-2(S-70)).

Subpart 236.70—Construction in Foreign Countries

236.7001 General.

Construction in foreign countries includes construction anywhere outside the United States, its possessions and Puerto Rico. In contracts which are entered into with foreign contractors or are for performance in foreign countries, the term "United States" will appear before the word "Government."

236.7002 Technical agreements.

When construction is contemplated in a foreign country, the Office of the Chief of Engineers, Department of the Army, or the Naval Engineering Facilities Command, Department of the Navy, as appropriate, should be invited to participate in the negotiations of any technical working agreement with a foreign government concerning the construction. This agreement negotiated between appropriate officials of the United States and the foreign government should, to the extent feasibl and where not otherwise provided fo in other agreements, cover all elements necessary for the construction required by the laws, regulations and customs of the United States and the foreign government relating to:

(a) The acquisition of all necessary rights;

(b) The expeditious, duty free Importation of labor, material and equipment;

(c) The payment of taxes applicable to contractors, personnel, materials and equipment;

(d) The applicability of workers' compensation laws and other labor laws to citizens of the United States, citizens of the host country and citizens of other countries;

(e) The provision of utility services;

(f) The disposition of surplus materials and equipment;

(g) The handling of claims and litigation; and

(h) Any other problems which can be foreseen and appropriately resolved by such agreement.

236.7003 Labor laws of host country.

Contractors shall comply with the applicable labor laws of the host country. Exemption from such laws shall be sought by means of treaty, executive agreement or express authorization from proper officials, where compliance with the laws is impractical or serves no useful purpose.

PART 237—SERVICE CONTRACTING

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46272, Dec. 23, 1986, unless otherwise noted.

Subpart 237.1—Service Contracts—General

237.104 Personal services contracts.

(b) Also see 237.104(S-70)(b) for additional authority required by Defense activities for use of 5 U.S.C. 3109.

(S-70) *Procurement of the personal services of experts or consultants.*

(1) *Scope.* This subsection sets forth policy and procedures for the procurement by contract, pursuant to 5 U.S.C. 3109, of the personal services of individual experts or consultants (including stenographic reporting services) from individuals and from firms, regardless of the terms of contract arrangements or whether with an individual expert or consultant or a firm employing such individuals. This subsection does not govern employment of individual experts or consultants by excepted appointment: The requirements for such employment are set forth in the Federal Personnel Manual, Chapter 304, "Employment of Experts and Consultants" and the regulations of the respective Departments. In addition, this subsection does not govern policy and procedures for advisory committees and their membership; the requirements for advisory committees are set forth in OMB Circular A-63, "Review of Federal Advisory Committees". Expert or consultant services as used in this subsection involve personal services contracts issued pursuant to 5 U.S.C. 3109

and may also involve "consulting" services subject to FAR 37.2 and 237.270 of this supplement.

(2) *Statutory authority.* (i) Authority for the procurement by contract of the personal services of experts and consultants is found in 5 U.S.C. 3109, as implemented by annual appropriation acts or by other legislation. Most contracts for expert or consultant services are executed by the Departments pursuant to the authority contained in the General Provisions of the Annual Department of Defense Appropriation Act.

(A) 5 U.S.C. 3109 provides:

> (a) For the purpose of this section—
>
> (1) "Agency" has the meaning given it by section 5721 of this title; and
>
> (2) "Appropriation" includes funds made available by statute under section 849 of Title 31.
>
> (b) When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services. Services procured under this section are without regard to—
>
> (1) The provisions of this title governing appointment in the competitive service;
>
> (2) Chapter 51 and subchapter III of chapter 53 of this title; and
>
> (3) Section 5 of title 41, except in the case of stenographic reporting services by an organization. However, an agency subject to chapter 51 of subchapter III of chapter 53 of this title may pay a rate for services under this section in excess of the daily equivalent of the highest rate payable under section 5332 of this title only when specifically authorized by the appropriation or other statute authorizing the procurement of the services.

(B) Typical of the language which is enacted each year in the General Provisions of the Department of Defense Appropriation Act implementing 5 U.S.C. 3109 in section 703 of the Act of December 21, 1979 (Pub. L. 96-154; 93 Stat. 1139), which provides:

> During the current fiscal year, the Secretary of Defense and the Secretaries of the Army, Navy and Air Force, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 3109 of title 5, United States Code, under regulations prescribed by the Secretary of Defense, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty stations and return as may be authorized by law: Provided, that such contracts may be renewed annually.

(ii) Contracts with individuals or firms for the personal services of experts or consultants are usually negotiated on a sole source basis under the authority of 10 U.S.C. 2304(c)(1), as implemented by FAR 6.302-1.

(3) *Limitations on use of expert or consultant authority.* Obtaining the personal services of individual experts or consultants by contract, pursuant to 5 U.S.C. 3109, is subject to the following limitations:

(i) The employment of individual experts or consultants shall be by contract only when the services required cannot be obtained by excepted appointment in accordance with personnel regulations.

(ii) The nature of the duties to be performed must be temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no contract shall be entered into for longer than one year at a time.

(iii) Procurement of the services must be advantageous to the national defense.

(iv) Such services shall not be used when existing facilities of the particular Department are adequate or when personnel with the necessary skills can be obtained through normal civil service appointment procedures.

(v) Procurement of such services by contract shall not be used as a means of circumventing manpower space ceilings.

(vi) Preference shall not be given to former Government employees per se.

(vii) Consultant services shall not under any circumstances be used to specifically aid in influencing or enacting legislation.

(4) *Authorization to enter into contracts: "Determinations and findings".*

(i) All contracts to be entered into pursuant to 5 U.S.C. 3109 for the personal services of experts or consultants must be authorized in writing by a Determinations and Findings (D&F)

signed in accordance with Departmental regulations. Ordinarily each contract shall be separately authorized. However, when the determinations can appropriately be made with respect to a class of contracts, the authorizing official may issue blanket authority for that class of contracts by signing a class D&F.

(ii) Each D&F shall authorize a contract or class of contracts to be entered into during a stated period not to exceed one year, which ordinarily shall be within one fiscal year. A D&F may be issued during one fiscal year to authorize a contract or class of contracts to be entered into during the following fiscal year, provided the determinations are reasonably expected to hold true at the time the contract or contracts are to be entered into and provided that either the D&F is made contingent upon enactment of implementing legislation or implementing legislation of the next fiscal year has already been enacted.

(iii) Each D&F shall contain the following:

(A) A brief description of the services authorized to be procured, including for individual D&Fs the estimated time of performance and the estimated cost;

(B) A determination by the authorizing official with respect to the particular contract or class of contracts that:

(*1*) The duties to be performed are of a temporary or intermittent nature;

(*2*) Procurement of the services is advantageous to the national defense;

(*3*) The existing facilities of his Department are inadequate to furnish the services;

(*4*) It is not feasible to obtain personnel with the necessary skills through normal civil service appointment procedures;

(*5*) A nonpersonal services contract is not practicable; and,

(*6*) Any other determination required by applicable statutes has been made;

(C) A citation of statutory authority, namely 5 U.S.C. 3109 and (except where (vii) below, is applicable) appropriate implementing legislation; the latter may be the current annual Department of Defense Appropriation Act, a current temporary Department of Defense appropriation enactment, or other appropriate legislation;

(D) A grant of authority to procure the required services and, if desired to extend the contract;

(E) The condition that the necessary funds must be available for obligation.

(F) The condition that no contract may be entered into for longer than one year at a time;

(G) An added condition, in cases where the D&F covers a period for which implementing legislation has not yet been enacted, that at the time the procurement is entered into there must be in effect a law authorizing the procurement pursuant to 5 U.S.C. 3109 and requiring no further Secretarial action than that required by the implementing legislation current at the time the D&F is issued;

(H) Where appropriate, authorization to contract across fiscal years (see FAR 37.106), and in such cases, where the implementing authority cited is annual legislation, an added condition that in the event the implementing authority is not renewed for the following fiscal year the contracting officer shall terminate the contract in accordance with its terms; and

(I) The date of expiration of the authority granted by the D&F.

(5) *Requests for determinations and findings.* Requests for authorization to procure the personal services of experts or consultants/pursuant to 5 U.S.C. 3109, whether from individuals or from firms, must contain statements required by Departmental regulations to support the determinations. The responsibilities of the various organizational levels in the Departments with respect to requests for D&Fs are also set forth in Departmental regulations.

(6) *Contracts with individual experts or consultants*—(i) *Method and amount of payment.* The contract may provide for compensation at rate for time actually worked (e.g., amount per day, per week, per month, etc.) or it may provide for performance of a specific task at a fixed price, or it may provide for nominal compensation. The amount or rate of payment will be determined on a case-by-case basis, taking into account (among any other relevant factors) the relative impor-

tance of the duties to be performed, the stature of the individual in his specialized field, comparable pay positions under the Classification Act or other Federal pay systems, rates paid by private employers, and rates previously paid other experts or consultants for similar work. Compensation for personal services is subject to the limitation in 237.104-(S-70)(9).

(ii) *Benefits.* When an individual expert or consultant is furnishing personal services and the contract provides for a regularly scheduled tour of duty during each administrative work week, the contract shall also provide that the contractor will be accorded the same paid annual and sick leave benefits as those to which he would be entitled under Departmental personnel regulations if he were employed by excepted appointment during the period of the contract. The contract may also provide for similar benefits (e.g., paid holidays, paid administrative leave), but these shall in no event exceed those to which the individual would be entitled under excepted appointment. No benefits shall be accorded the contractor which are not specifically provided for in the written contract. The contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

(iii) *Taxes.* When the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment), and federal income withholding tax. It may also be necessary to report or withhold state income tax under 5 U.S.C. 84b. The contracting officer shall take appropriate steps in coordination with the cognizant civilian personnel office to have deductions and reports made where required by law.

(iv) *Conflict of interest.* The contracting officer shall ensure that individual experts or consultants who are to render personal services under contract familiarize themselves with Executive Order 11222, May 8, 1965, "Prescribing Standards of Ethical Conduct for Government Officers and Employees", 30 FR 6469 (1965), and that they comply with it and with Departmental regulations implementing it.

(v) *Administrative treatment.* In vidual experts or consultants who a to render personal services under co tract are charged against personn ceilings in the same way as exper and consultants employed by except appointment. Also, the cognizant civ ian personnel office must mainta certain records on individual exper and consultants who render person services. Therefore, the contracting o ficer shall effect necessary coordin tion with the cognizant civilian pe sonnel office before award of a con tract for personal services and ma also designate the appropriate personnel office as his representative for th purpose of administering contract pro visions relating to benefits, obtainin necessary data from the contractor fo tax withholding purposes, and admin istering applicable conflict of interes provisions.

(7) *Contracts with firms for expert o consultant services.* When contract with firms for the services of specifie individual experts or consultants ar considered to be personal services contracts (see FAR 37.104), payment fo the services of each expert or consultant is subject to the guidelines in 237.104(S-70)(i) and the limitations in 237.104(S-70)(e). Contracts with firms for consulting or other management support services, where those services are nonpersonal in nature, are not entered into pursuant to the authority of this subsection and should not specifically address individual compensation by the firm or with any other rights or obligations as between the firm and these individuals, but should deal only with rights and obligations as between the Government and the firm.

(8) *Contracts for stenographic reporting services.* (i) Stenographic reporting services normally are provided by regular civilian employees appointed under the usual civil service procedures. However, under certain circumstances these services may be procured by contract from individuals or firms (pursuant to 5 U.S.C. 3109, if personal as where there are variable requirements or insufficient qualified personnel, and necessity or economy to the Government demand.

(ii) Such contracts shall normally be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary materials (typewriter, paper, bindings, etc.).

(iii) Contracts for stenographic reporting services may be considered to be for nonpersonal services, and therefore not subject to the provisions of this subsection, *Provided* that:

(A) They are written in accordance with (b) above;

(B) They do not involve ordinary, day-to-day stenographic or secretarial services;

(C) They do not involve direct or indirect Government supervision of contractor employees; and

(D) They involve temporary or intermittent requirements.

(9) *Limitation on payment for personal services.* (i) When the personal services of individual experts or consultants are being procured pursuant to 5 U.S.C. 3109, payment of the services of each expert or consultant shall not exceed the highest rate fixed by the Classification Act pay schedules for grade GS-15 or, in the case of professional engineering services primarily involving research and development or professional services involving physical or natural sciences or medicine, the highest rate payable to a GS-18. In addition, the contract may provide for such per diem and travel expenses as would be authorized for a Government employee, including actual transportation and per diem in lieu of subsistence while the expert or consultant is traveling between his home or place of business and his official duty station.

(ii) If a fixed-price contract which is predominantly for nonpersonal services also includes personal services, the requirements of (a) above are applicable to the personal services if it is feasible and practicable to price them separately.

(10) *Extension of contracts.* (i) A contract may provide for extension—for a maximum of one year each time—by written notification to the contractor from the contracting officer.

(ii) A contract shall not be extended unless either a new D&F has been issued, or the D&F authorizing the original contract (or a prior extension) has not yet expired and specifically authorizes the extension, or an unexpired class D&F covering that type of contract is in effect, (also see 237.104-(S-70)(f)).

(S-71) *Acquisition of personal direct health care services.*

(1) *Scope.* This subsection sets forth policy and procedures for the acquisition by contract, pursuant to 10 U.S.C. 1091, of the personal direct health care services from individuals or firms. (Nothing in this subsection precludes the acquisition by contract of nonpersonal health care services or applies to such services.)

(2) *Definition of direct health care services.* Direct health care services are those services provided by health care providers who participate in clinical patient care and services. Some examples of direct health care providers for the purpose of this subsection are nurses, radiology technicians, dental hygienists, and medical technologists. Not included are the services of personnel whose duties are predominantly administrative or clerical and personnel who provide maintenance or security services.

(3) *Policy.* It is the policy of the Department of Defense that when inhouse sources are insufficient to support the medical mission of the Military Departments or DoD Components, contracting officers may contract for personal direct health care services under the authority of 10 U.S.C. 1091 (see DoDI 6025.5).

(4) *Limitations on contracting for personal direct health care services.* Obtaining personal direct health care services under contract is subject to the following limitations:

(i) Preference shall not be given to former government employees.

(ii) Compensation of contract health care providers is negotiable depending upon the skills of the prospective contractor. Compensation shall be within the limits established in the table below.

(iii) Each prospective personal direct health care services contract shall be approved (see Departmental implementation of DoDI 6025.5 for approval requirements). The requiring activity shall provide the contracting officer a copy of the approval to enter into a personal direct health care services contract. A copy of the approval shall be retained in the contract file.

TABLE OF MAXIMUM AUTHORIZED COMPENSATION RATES

Occupation/specialty group	Compensation rate not to exceed*	
	Pay grade	Years of service
I. Physicians and dentists	0-6	Over 26.
II. Other individuals, including nurse practitioners, nurse anesthetists, and nurse midwives, but excluding paraprofessionals.	0-5	Over 20 but less than 22.
III. All registered nurses, except those included in Group II	0-4	Over 16 but less than 18.
IV. Paraprofessionals	0-3	Over 6 but less than 8.

* Compensation rate includes basic pay and basic allowance for subsistence and basic allowance for quarters (including VHA); it does not include special and incentive pays, hazardous duty pay, flight pay, professional pay, continuation pay, or any discretionary pay.

(5) *Malpractice liability insurance.* Personal services contractors shall not be required to furnish malpractice liability insurance.

[51 FR 46272, Dec. 23, 1986, as amended at 53 FR 38196, Sept. 29, 1988]

237.106 Funding and term of service contracts.

Categories of service contracts funded by annual appropriations that are authorized to extend beyond the end of the fiscal year of the annual appropriation used are as follows:

(a) A one year contract for maintenance of tools or facilities if authorized under the current Department of Defense Appropriations Act;

(b) A multi-year service contract;

(c) A one-year requirement or indefinite quantity contract, as defined in FAR 16.503 and FAR 16.504, in which any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (but see FAR 32.705-1(b)); or

(d) A contract for the personal services of experts or consultants entered into in accordance with 237.104-(S-70), or a contract for educational services, which cannot feasibly be subdivided for separate performance in each fiscal year.

Subpart 237.2—Consulting Services

237.204 Policy.

(S-70) For proposed contracts to be awarded as a result of an unsolicited proposal, the limitations of 215.507(b)(S-70) apply.

[51 FR 46272, Dec. 23, 1986, as amended at 53 FR 50416, Dec. 15, 1988]

237.205 Management controls.

DoD Directive 4205.2, DoD Contracted Advisory and Assistance Services, contains these procedures.

[53 FR 50416, Dec. 15, 1988]

237.206 Requesting office responsibilities.

(b) Departments shall further ensure that when there is a need for the use of the type of services in FAR 37.203, the approval authority for actions greater than $50,000 is not below the SES manager or General or Flag Officer level, except when 0-6 personnel are filling such command or management positions or have subordinate SES personnel.

[53 FR 50416, Dec. 15, 1988]

Subpart 237.3—Dismantling, Demolition, or Removal of Improvements

237.302 Bonds or other security.

If the contracting officer determines that it is in the best interest of the Government to require the contractor to furnish a performance bond or other security, the "Bid Guarantee" clause at FAR 52.228-1 and the "Bonds or Other Security" provision at 252.228-7004 shall be included in the solicitation.

237.304 Contract clauses.

(S-70) *Statement of work.* The contracting officer shall insert the clause at 252.237-7000, "Statement of Work," in solicitations and contracts for dismantling, demolition or removal of improvements in order to specify the property to be dismantled, demolished or removed, the dates of commencement and completion of the work, requirements for conditioning, handling and storing property retained by the Government, and applicable bond requirements.

(S-71) *Composition of contractor.* The contracting officer shall insert the clause at 252.236-7000, "Composition of Contractor," in solicitations and contracts for dismantling, demolition or removal of improvements to specify that if the contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable for compliance with all provisions of the contract.

(S-72) *Misplaced material.* The contracting officer shall insert the clause at 252.236-7006, "Misplaced Material," in solicitations and contracts for dismantling, demolition or removal of improvements when the contract involves work on or near navigable waterways in order to set forth the contractor's responsibility for misplaced material.

[51 FR 46272, Dec. 23, 1986, as amended at 53 FR 38196, Sept. 29, 1988]

Subpart 237.70—Engineering and Technical Services

237.7001 Definitions.

"Contractor engineering and technical services" means the furnishing of advice, instruction, and training to Department of Defense personnel, by commercial or industrial companies, in the installation, operation, and maintenance of Department of Defense weapons, equipment, and systems. This includes transmitting the knowledge necessary to develop among those Department of Defense personnel the technical skill required for installing, maintaining and operating such equipment in a high state of military readiness.

(a) *Contract Field Services (CFS)* means those engineering and technical services provided on site at defense locations by the trained and qualified engineers and technicians of commercial or industrial companies.

(b) *Contract Plant Services (CPS)* means those engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components, in the manufacturer's own plants and facilities.

(c) *Field Service Representatives (FSR)* means those employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

237.7002 Contracting for engineering and technical services.

(a) *General.* Every contract calling for engineering and technical services, whether it calls for only those services or whether it calls for those services in connection with the furnishing of an end item, shall show those services as a separate and identifiable line item separately priced. The contract shall contain definitive specifications for the services and shall show the man-months involved.

(b) *Personal services.* Notwithstanding FAR 37.104, in the event unusual requirements involving essential mission accomplishment necessitate the procurement of contract field services (CFS) which appear to be personal services, those services may be obtained by contract for an interim period if that particular procurement is specifically authorized by the Assistant Secretary of Defense (Manpower, Installations and Logistics).

Subpart 237.71—Mortuary Services

237.7100 Scope.

Acquisition procedures peculiar to contracts for mortuary services (the care of remains) of military personnel within the United States are set forth in this subpart. These procedures may be used as guidance in areas outside the United States in acquiring such services for both deceased military and civilian personnel.

237.7101 Method of acquisition.

(a) *Acquisitions by requirements type contract.* By agreement among the military activities involved, one military activity in each geographical area shall contract for the estimated requirements for the care of remains for all activities in the area. Acquisition shall be by use of a requirements type contract (see FAR 16.503) when the estimated annual requirements for the individual activity concerned, or for the activities using one contract, are 10 or more. Such acquisitions shall be made using the sealed bid method when the criteria of FAR 6.103(a) are met.

(b) *Acquisitions by purchase order.* Where no contract exists, such services shall be obtained by use of DD Form 1155, "Order for Supplies and Services/Request for Quotations," and DD Form 1155r, "General Provisions" (see FAR 13.5), inserting in the Schedule the clauses prescribed in 213.505-2.

(c) *Solicitation planning.* Offers for annual requirements for the next fiscal year shall be solicited in sufficient time to permit award prior to the beginning of the fiscal year.

(d) *Area of performance.* Each contract for care of remains (except Port of Entry Requirements contracts) shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or other features as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

(e) *Distribution of contracts.* In addition to normal contract distribution, three copies of each contract shall be furnished to each activity authorized to use it, and two copies to each of the following:

(1) HQDA (DAAG-PED), Alexandria, VA 22331.

(2) Bureau of Medicine and Surgery, Department of the Navy (MED 3134), 23rd and E Streets, NW, Washington, DC 20372.

(3) Headquarters, AFMPC/MPCCM, Randolph AFB, TX 78150.

237.7102 Schedule formats.

(a) *Schedule format for other than port of entry requirements contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations and contracts for other than port of entry requirements. The estimated quantities are only illustrative.

Item No	Supplies, services and transportation	Estimated quantity	Unit	Unit price	Amount
0001	For a standard size casket, supplies and services in accordance with specifications.	10	Each		
0002	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	2	Each		

Item No.	Supplies, services and transportation	Estimated quantity	Unit	Unit price	Amount
0003	For an oversize casket, supplies and services in accordance with specifications.	4	Each		
0004	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	1	Each		
0005	For transportation of remains, in accordance with specifications and as provided for in paragraphs (b) and (c) of the "Area of Performance" clause of this contract.	200 loaded miles	(Loaded mile).		

Additional items may be added (in numerical sequence), as required.

(b) *Schedule format for port of entry requirements contracts.* Set forth below is an example of a Schedule format suitable for use in solicitations and contents for port of entry requirements. The estimated quantities are only illustrative.

Item No.	Supplies, services and transportation	Estimated quantity	Unit	Unit price	Amount
0001	For a standard size casket, supplies and services in accordance with specifications.	20	Each		
0002	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	17	Each		
0003	For an oversize casket, supplies and services in accordance with specifications.	5	Each		
0004	Shipping container conforming to performance testing specification requirements of the air carrier and subsequent connecting carriers.	3	Each		
0005	For inspection and/or reprocessing of casketed remains prior to delivery to selected common carrier.	18	Each		

Item No.	Supplies, services and transportation	Estimated quantity	Unit	Unit price	Amount
0006	For transportation of remains between ________ and processing facility.	31	(Loaded trip each).	....	....
0007	For transportation of remains between processing facility and selected common carrier or National Cemetery as indicated below:.	....	(Loaded trip each).	....	....
	X———	9	....	....	....
	Y———	10	....	....	....
	Z———	9	....	....	....
0008	For transportation of remains between processing facility and any point within 100 miles as designated by the contracting officer.				

Additional items may be added (in numerical sequence), as required.

237.7103 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 252.237-7100, Award to Single Bidder, in sealed bid solicitations for mortuary services contracts.

(b) The contracting officer shall insert the provision at 252.237-7101, Award to Single Offeror, in negotiated solicitations for mortuary services contracts.

(c) The contracting officer shall insert the following clauses in mortuary services solicitations and contracts except those for port of entry requirements:

(1) 252.237-7102, Requirements;

(2) 252.237-7103, Area of Performance;

(3) 252.237-7104, Specifications;

(4) 252.237-7105, Using Activities;

(5) 252.237-7106, Delivery Orders and Invoices;

(6) 252.237-7107, Delivery and Performance;

(7) 252.237-7108, Subcontracting;

(8) 252.237-7109, Additional Default Provision;

(9) 252.237-7110, Group Interment;

(10) 252,237-7111, Professional Requirements;

(11) 252.237-7112, Facility Requirements;

(12) 252.237-7113, Preparation History.

(d) Except for the "Area of Performance" and the "Facility Requirements" clauses, the contracting officer shall insert all of the clauses in (c) above, as well as the Government-Furnished Property (Short Form) clause at FAR 52.245-4 in port of entry solicitations and contracts for mortuary services.

Subpart 237.72—Laundry and Dry Cleaning Services

237.7200 Scope.

This subpart contains instructions for the preparation and use of contracts for laundry and dry cleaning services within the United States. It may be used as guidance in all other locations.

237.7201 General policy.

Except for laundry and dry cleaning services acquired under small purchase procedures, the normal method of contracting for laundry and dry cleaning services shall be by formal advertising.

237.7202 Selection of count of articles or weight (unsorted or presorted) basis.

Laundry services in support of hospitals may be acquired on the basis of (a) a count of articles or (b) by bulk weight. Acquisitions by weight may be on either a pre-sorted (bag type) or unsorted (simple bulk weight) basis. The basis of acquisition shall be at the discretion of the requiring activity in conjunction with advice of the contracting officer based on consideration of such factors as price, administrative costs, aseptic requirements, risk of contamination/cross-contamination, volume and nature of articles to be serviced. All other laundry and dry cleaning services shall be acquired on a count of articles basis.

237.7203 Schedule format.

Set forth below are examples of schedule formats suitable for use in solicitations. The estimated quantities are only illustrative.

(a) Count of articles.

Item No.	Item	Estimated quantity for contract period	Unit	Unit price	Estimated amount
	LOT I				
	Laundering				
0001	Pillowcase (P)	100,000	Each		
0002	Nurses Uniform, with belt (S) (P) (OH)*	25,000	Each		
0003	Slippers	50,000	Pair		
	LOT II				
	Dry Cleaning				
0004	Curtains	500	Each		
0005	Trousers (P)	5,000	Each		
	LOT III**				
	Individual Laundry				
0006	Individual bundle (26 piece)	1,000	Each		
0007	Individual bundle (18 piece)	1,000	Each		
***					

* (S)—Starched, (P)—Pressed, (OH)—Item delivered on hanger (hanger included in Unit Price), and ( ) Other instructions as required.

** Include in contracts containing the Individual Laundry clause at 252.237-7208.

*** See Subpart 4.71 for Line Item Numbering Procedures.

(b) Bulk weight (unsorted).

Item No	Item	Estimated quantity for serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	Laundry Services for the items listed below	100,000	Lb		
	The following articles are to be serviced. Separate prices are not to be submitted for these articles				
	Towels, hand	40,000	Lb	NSP	
	Sheets	40,000	Lb	NSP	
	Wash cloths	20,000	Lb	NSP	

(c) Bulk weight (bag type).

Item No.	Item	Estimated quantity for serviced laundry for contract period	Unit	Unit price	Estimated amount
0001	BAG TYPE I (Patient items: sheets, pillow cases.)	200,000	Lb		
0002	BAG TYPE II (Terry Type: Towels, wash cloths.)	100,000	Lb		
0003	BAG TYPE III (Surgical items: Masks, caps, shirts.)	50,000	Lb		

Item No.	Item	Estimated quantity for serviced laundry for contract period	Unit	Unit price	Estimated amount
0004	BAG TYPE IV CONTAMINATED (May include any or all items in above listed bag types.).	75,000	Lb		

237.7204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert a provision similar to that set forth at 252.237-7200, Instructions to Bidders (Count of Articles), in solicitations for laundry and dry cleaning services when such services are to be provided on a count of articles basis.

(b) The contracting officer shall insert a provision similar to that set forth at 252.237-7201, Instructions to Bidders (Bulk Weight), in solicitations for laundry services when such services are to be provided on a bulk weight basis.

(c)(1) The contracting officer shall insert the clause at 252.237-7202, Count of Articles, in solicitations and contracts for laundry and dry cleaning services to be provided on a count of articles basis.

(2) When laundry and dry cleaning services are to be provided to individual personnel on a count of articles basis, the contracting officer shall use the clause with its Alternate I.

(d) The contracting officer shall insert the clause at 252.237-7203, Loss or Damage (Count of Articles), in solicitations and contracts for laundry and dry cleaning services to be provided on a count of articles basis.

(e) The contracting officer shall insert the following clauses, substantially the same as the clauses prescribed below, in solicitations and contracts for laundry services to be provided on a bulk weight basis:

(1) 252.237-7204, Weight of Articles (Bag Type), for bag type laundry;

(2) 252.237-7205, Weight of Articles (Unsorted), for unsorted laundry;

(3) 252.237-7206, Loss or Damage (Weight of Articles);

(4) 252.237-7207, Maximum Weight Loss.

(f) The contracting officer shall insert the clause at 252.237-7208, Individual Laundry, in solicitations and contracts for laundry services to be provided to individual personnel.

(g) The contracting officer shall insert the clause at 252.237-7209, Special Definitions of Government Property, in solicitations and contracts for laundry and dry cleaning services.

Subpart 237.73—Educational Service Agreements

237.7300 Scope.

This subpart prescribes acquisition procedures for agreements with established schools, colleges, or universities, or other educational institutions for educational services using the institution's facilities, standard courses, and prevailing tuition and fees applicable to the general public. As used in the part, "facilities" does not include the institution's dining rooms or dormitories. Also, as used in the subpart, "fees" does not include charges for meals or lodging. Tuition assistance agreements, i.e., payment by the Government of partial tuition under the off-duty educational program, are not included under this subpart. Except in connection with the detailing of commissioned officers to law schools pursuant to 10 U.S.C. 2004, no agreement shall be made under this subpart which will provide for, or results in payment of Government funds for tuition or other expenses in connection with training in any legal profession.

237.7301 Educational service agreement.

(a) An educational service agreement is one which calls for educational services to be provided under the following conditions:

(1) The Government pays all normal tuition and fees for educational services provided to a student by the contractor under its regularly established schedule of tuition and fees applicable to all students generally; and

(2) Enrollment is at the contractor's institution under his regular rules and in courses and curricula which the institution offers to all students meeting the contractor's admission requirements, with no special courses or special fees applicable to Government students.

(b) An educational service agreement is not a contract, but is a continuing offer which may be accepted by the Government by the placing of requests for services. Each request for services results in a separate contract.

237.7302 [Reserved]

237.7303 Duration.

Educational service agreements shall be for an indefinite duration and shall remain in effect until terminated. However, the issuing activity shall establish procedures to review each educational service agreement at least once each year (with due regard to the institution's academic calendar and at least 30 days before the beginning of a term) for the purpose of incorporating changes to reflect requirements of any Statute, Executive Order, or this regulation. If the parties do not agree on such required changes, the contracting officer shall terminate the agreement in accordance with its terms.

237.7304 Format and clauses for educational service agreements.

Educational service agreements authorized by this Subpart shall be on locally reproduced forms consisting of a cover page, general provisions, schedule, and signature page, in the format set forth in this paragraph. The contracting officer may add to the schedule any other provisions necessary to describe the requirements of the Department, as long as such provisions do not contradict any of the general provisions or schedule provisions prescribed by this paragraph or otherwise alter the concept of acquiring educational services in the form of standard course offerings at the prevailing rates of the institution.

(a) *Cover page.* The cover page shall contain the following provisions and necessary information to complete the provisions.

EDUCATIONAL SERVICE AGREEMENT

Agreement No. ——.

1. This agreement entered into on the ——— day of ———, 19——, between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, and (name of institution), an educational institution located at ——— (City) ———, ——— (State) ———, herein after called the "Contractor", is for educational services to be provided to Government personnel at the Contractor's institution. The parties intend that the Contractor shall provide instruction with standard offerings of courses available to the public and shall receive payment for services rendered in accordance with the Contractor's schedule of tuition and fees applicable to the public and in effect at the time the services are performed.

2. This agreement may be amended only by mutual consent of the parties.

3. The Government will review this agreement annually before the anniversary of its effective date for the purpose of incorporating changes required by Statutes, Executive Orders, the Federal Acquisition Regulation, or the DoD FAR Supplement; such changes will be evidenced by a modification to this agreement or by a superseding agreement. If the parties fail to agree upon any such change, the Government will terminate this agreement.

4. This agreement shall commence on the effective date above and shall continue until terminated.

5. The estimated annual cost hereunder is $———; however, this estimate is for administrative purposes only and shall not impose any obligation on the Government to request any services or to make any payment except as provided herein.

6. Advance payments are authorized by 31 U.S.C. 529i.

7. Submit invoices to: ——— (Name and Address of Activity)

8. This agreement consists of this cover page, a Schedule of ——— (number of pages) pages, General Provisions of ——— (number of pages) pages, and a Signature Page.

(b) *Schedule Provisions.*

SCHEDULE PROVISIONS

1. Ordering Procedures and Services To Be Provided.

(a) The Contractor shall promptly deliver to the Contracting Officer one copy of each catalog applicable to this agreement, and one copy of any subsequent revision thereof.

(b) The Government will request educational services under this agreement by delivery to the Contractor of (insert type of request that will be used; e.g., delivery order, official Government order, or other written communication) containing the number of this agreement and designating as students at the Contractor's institution under this agreement one or more Government-selected persons, who have already been accepted for admission under the Contractor's usual standards of admission.

(c) All students under this agreement shall register in the same manner, be subject to the same academic regulations, and have the same privileges, including the use of all facilities and equipment as regular non-Government students (hereinafter called civilian students).

(d) Upon enrolling each student pursuant to this agreement, the Contractor shall, where the resident or nonresident status involves a difference in tuition or fees:

(i) Determine the resident or nonresident status of the student and notify the student and the contracting officer of such determination, and if there is an appeal of such determination, process the appeal in accordance with the Contractor's standard procedures and notify the appellant of the result; and

(ii) Make the above determination a part of the student's permanent record.

(e) The Contractor shall not furnish any instruction or other services to any student pursuant to this agreement prior to the effective date of a request for such services in the form specified above.

2. *Change in curriculum.* The Contracting Officer may vary the curriculum for any student enrolled under this agreement but shall not require or make any change in any course as offered by the Contractor without the Contractor's consent.

3. *Payment.*

(a) The Government shall pay the Contractor the regularly established tuition and fees which the Contractor charges civilian students pursuing the same or similar curricula, except for any tuition and fees which this agreement specifically excludes. The Contractor shall have the right to change any tuition and fees, provided that the Contractor publishes such revisions in a catalog or otherwise publicly announces such revisions and applies them uniformly to all students pursuing the same or similar curricula as Government students enrolled under this agreement. The Contractor shall provide the Contracting Officer notice of such changes prior to their effective date.

(b) The Contractor shall not establish any tuition or fees which apply solely to Government students.

(c) If the Contractor regularly charges higher tuition and fees for students who are not residents of the State in which the Contractor is located, the Contractor may charge the Government such regularly established nonresident tuition and fees for those Government students who are in fact nonresidents. The Government shall not claim resident tuition and fees for any student solely on the basis of his residing in the state as a consequence of enrollment under this agreement.

(d) The Contractor shall charge the Government only the tuition and fees (which may include (i) penalty fees for late registration or change of course occasioned by action of the Government and (ii) mandatory health fees and health insurance charges) which relate directly to enrollment as a student and are a consequence of his being a student. The Contractor shall not charge the Government for permit fees, such as vehicle registration or parking fees, unless specifically authorized in the request placed hereunder. In addition to the above, the Contractor shall not make any charge under this agreement for any equipment, refundable deposits, or any items or services (such as computer time) related to student research. However, any flat rate charge applicable to all students registered for research and which appears in the Contractor's publicly announced fee schedule shall be chargeable under this agreement.

(e) Normally the Contractor shall not directly charge individual students for application fees or any other fee properly chargeable to this agreement. However, if the Contractor's standard procedures require payment of any fee before the student is enrolled under this agreement, the Contractor shall reimburse the student in full for any such fee when the Contractor receives payment therefor under this agreement.

(f) For each term in which the Contractor enrolls students under this agreement the Contractor shall submit ——— copies of an invoice listing charges for each student separately. Contractor shall submit invoices within ——— days after the start of the term it covers and shall include:

(i) Agreement number and inclusive dates of the term to which the invoice applies;

(ii) Name of each student;

(iii) Schools which charge by credit hou shall list each course of each student;

(iv) The resident or nonresident status of each student (if applicable to the Contractor's school);

(v) Breakdown of charges for each student, identifying each element; e.g., Credit Hours: $———, Tuition: $———, Application Fee: $———, Labor Fee (Chem 300): $———. Contractor shall show the *total of fees for each student and grand total for all students listed on the invoice.*

(g) If unforeseen events require additional charges which are otherwise payable in accordance with the Contractor's published tuition and fee schedule, the Contractor may submit a supplemental invoice or make the adjustment on the next regular invoice under this agreement. In either case the Contractor shall clearly identify and explain the supplemental invoice or the adjustment.

(h) The Contractor shall apply to subsequent invoices submitted under this agreement any credits resulting from withdrawal of students, or from any other cause in accordance with its standard procedures. Such credits should appear on the first invoice submitted after the action resulting in such credits. If no subsequent invoice is submitted, the Contractor shall deliver to the Contracting Officer a check drawn to the order of the office designated for contract administration. Contractor shall identify the reason for the credit and the applicable term dates in all cases.

4. *Withdrawal of students.*

(a) The Government may, at its option and at any time, withdraw financial support for any student by issuing official orders. The Government shall furnish ——— copies of such orders to the Contractor within a reasonable time after publication.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

5. *Transcripts.* Within a reasonable period of time after withdrawal of a student for any reason, or after graduation, the Contractor shall send to the Contracting Officer (or to such other address as the Contracting Officer may specify) one copy of an official transcript showing all work by the student at the Contractor's institution until such withdrawal or graduation.

6. *Student teaching.* Awarding of fellowships and assistantships by the Contractor to students attending school under this agreement is not anticipated. In the case of graduate students, however, should both the student and the Contractor deem it to be in the best interests of the student for him to assist in the teaching program of the institution, the Contractor may provide nominal compensation for such students' part-time service in accordance with the Contractor's established practices and procedures for other students of similar accomplishment in that department or field. Such compensation shall be applied as a credit against any invoices presented for payment for any period in which he performed the part time teaching service.

7. *Termination of agreement.*

(a) Either party may terminate this agreement by giving thirty (30) days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the Contractor's institution under this agreement until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this agreement in effect on the effective date of the termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students pursuant to Schedule Provision 4 shall not be considered a termination within the meaning of this provision.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

(c) *General provisions.*

GENERAL PROVISIONS

1. *Definitions.* Insert the clause at FAR 52.202-1, Definitions, with the following additional paragraphs.

(d) The word "term" means the period of time into which the Contractor divides the academic year for purposes of instruction; this includes "semester," "trimester," "quarter," or any similar word the Contractor may use.

(e) The word "course" means a series of lectures or instructions, and/or laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401 or Surveying. Normally, student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(f) The word "curriculum" means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(g) The word "catalog" means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(h) The word "tuition" means the amount of money charged by an educational institution for instruction, not including fees as defined below.

(i) The word "fees" means those applicable charges directly related to enrollment in the Contractor's institution. This shall not include any permit charge (e.g., parking, vehicle registration or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in the request placed hereunder.

2. *Gratuities.* Insert the clause at FAR 52.203-3.

3. *Covenant against contingent fees.* Insert the clause at FAR 52.203-5.

4. *Officials not to benefit.* Insert the clause at FAR 52.203-1.

5. *Approval of contract.* Insert clause from FAR 52.204-1 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

6. *Order of precedence.* Insert clause from FAR 52.215-18.

7. *Conflicts between agreement and catalog.* Insert the following clause:

CONFLICTS BETWEEN AGREEMENT AND CATALOG

To the extent of any inconsistency between the provisions of this agreement and any catalog or other document incorporated in this agreement by reference or otherwise or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. *Disputes.* Insert the clause at FAR 52.233-1.

9. *Convict labor.* Insert the clause at FAR 52.222-3.

10. *Equal opportunity.* In accordance with FAR 22.802, 22.807, and FAR 22.810 insert the appropriate clause from FAR 52.222-26.

11. *Assignment of claims.* Insert the following clause.

ASSIGNMENT OF CLAIMS

No claim under this agreement shall be assigned.

12. *Examination of records by comptroller general.* In accordance with the requirements of FAR 52.215-1, insert the clause therein.

13. *Alterations in contract.* Insert the clause at FAR 52.252-4 in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

(d) *Signature page.* The signature page shall be in the following format.

Agreement No. ——

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereunto have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA
By: ——————————
(Contracting Officer)
Activity ——————————
Location ——————————
(NAME OF CONTRACTOR)
By: ——————————
(Title) ——————————

Subpart 237.74—Communication Services

237.7401 Definitions.

Appropriate Governmental Regulatory Body means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this subpart.

Common Carriers means any person, partnership, association, joint-stock company, trust governmental body, or corporation engaged in the business of providing communications services to the general public, normally authorized or franchised by the Federal Communications Commission (FCC) or other appropriate governmental body.

Communications Services means those services provided by all types of systems and facilities connected therewith that employ electric or electromagnetic signals to transmit information between two or more points by means of radio, wire, cable, satellite and other media. Included are telephone, telegraph, teletypewriter, remote writing, remote display, data transmission, facsimile and television transmission services, as well as terminal devices, switches, private branch exchanges, transmission facilities and other components of the systems that supply these services. Also included are all local, post, camp, station or long distance services, as well as all fixed or mobile facilites that are interconnected to systems providing these types of services.

Foreign Carrier means any person, partnership, association, joint-stock company, trust, governmental body, or corporation not subject to regulation by an appropriate United States governmental regulatory body and not doing business as a citizen of the United States, which provides communications services outside the territorial limits of the United States.

Noncommon Carrier means any entity other than a common carrier which offers communications facilities, services or equipment for lease.

237.7402 Applicability.

This subpart applies to acquisition of communications services from communications common carriers regulated by the Federal Communications Commission or an appropriate governmental regulatory body. In addition, except as otherwise specifically provided, this subpart provides guidelines for the acquisition of all other communications services (e.g., from nonregulated common carriers, noncommon carriers and foreign carriers) but is not mandatory for use in such acquisitions.

237.7403 Policy.

In accordance with instructions contained in Department of Defense directives and implementing departmental regulations concerning the operation of commercial and industrial type activities, and specifically with those concerning the sources for communications services, the Department of Defense generally procures communications services of a kind offered by common carriers, including equipment and facilities incidental to those services, from common carriers in accordance with tariff provisions, and at tariff rates established with the Federal Communications Commission (FCC) or with other appropriate governmental regulatory bodies unless cost or operational requirements dictate otherwise.

237.7404 Regulatory bodies.

(a) The Federal Communications Commission (FCC) and other appropriate governmental regulatory bodies generally publish rules and regulations governing the operations of common carriers and prescribe accounting principles to be employed in the establishment of rates. Notwithstanding other provisions of this Supplement, the regulations, practices, and decisions of the FCC and other appropriate governmental regulatory bodies concerning rates, cost principles, and accounting practices shall be recognized in the procurement of communications services from common carriers. With respect to those issues concerning common carrier services (1) on which the appropriate governmental regulatory body has not expressed itself, (2) over which the appropriate governmental regulatory body has declined jurisdiction, or (3) as to which there is no appropriate governmental regulatory body to make a decision, specific provisions should be made in the contract for adoption of FCC-approved practices or the generally accepted practices of the industry.

(b) Since the Department of Defense frequently requires unusual or special communications services advancing the "state of the art," Defense Department activities frequently move into areas which the cognizant governmental regulatory bodies have not explored. In such situations, the Defense Department frequently is the sole or primary user of many of a given common carrier's offerings. In addition, because of the large volume or normal services which the Defense Department requires, the day-to-day decisions of governmental regulatory bodies may have a vast dollar impact upon it. It is not Defense Department policy to duplicate the efforts of appropriate governmental regulatory bodies or to act as a second regulatory body. On the other hand, the Defense Department's self interest requires that it act as an informed and intelligent consumer, seeing to it that its side of the case is presented to the cognizant bodies and working with the common carriers to ensure that in those areas in which the FCC cannot or will not rule, sound regulatory practices are followed. Every effort should be made to avoid the time and expense of litigation by full and fair disclosure of both the carrier's and the Government's position in advance. Nevertheless, in the event actions short of litigation are not productive or just, reasonable or otherwise lawful rates, or when there is a refusal to provide required services or file appropriate tariffs, legal actions should be initiated and vigorously pursued. All contacts with the regulatory bodies should be through cognizant counsel in accordance with established Departmental and Defense Communications Agency procedures.

(c) Upon receipt of tariff information received in accordance with 252.237-7411, Tariff Information, the contracting officer shall immediately provide copies to the cognizant counsel.

237.7405 Sources for communications services.

237.7405-1 Common carriers.

(a) Communication services shall be acquired from the communication common carriers authorized by the appropriate regulatory body to operate within the service area in which the services are required.

(b) Although normally only one carrier is authorized to provide a specific type of service at any given location, there are locations at which no single communication common carrier has the exclusive right to provide the required service. When this is the case and more than one common carrier is authorized and can provide the required service, the acquisition shall be made from the source offering the lowest cost to the Government, if practicable. If this is not practicable, the contract file shall be documented as to the reasons for selection of another source (e.g., unique ability to meet service date; more timely and effective maintenance; security reasons; system integrity). In any event, special assembly items and entire communications systems shall be acquired using full and open competition unless otherwise authorized under FAR subpart 6.3; and every effort should be made to exclude from the service contract any provisions which would require the Government to lease from the source of service any associated and related items such as circuits, circuit extensions, and terminal equipment.

237.7405-2 Noncommon carriers.

While communications services generally shall be acquired from common carriers, they may be acquired from noncommon carriers when equipment and the services function as a complete communication system or are an integral part of a communication system. Equipment and services shall be considered an integral part of a communication system if the combination of equipment and services is necessary to perform the desired services.

237.7405-3 Foreign carriers.

The acquisition of communication services within or between foreign countries and the acquisition from a foreign carrier of communication services from a foreign country to the United States present problems beyond the scope of this subpart. Frequently, foreign carriers are owned by the Government of the country in which they operate, and their methods of doing business are prescribed by the foreign Government. In many countries, an international agreement with the host country prescribes guidelines for how the Defense Department will obtain communication services. In addition, there are frequently severe problems with taxes on communications in foreign countries. In other countries, a corporate subsidiary of a carrier not indigenous to the country (often a U.S. parent) is the sole source for communication services. As a general rule in foreign countries, rates and practices should be spelled out in as much detail as possible in a contractual document. It consistently has been Defense Department policy not to pay discriminatory rates and to pay no more for communication services in a foreign country than does the military of that country. Special problems with communications procurement in foreign countries should be channeled to higher headquarters for resolution with the assistant of State Department representatives as appropriate.

237.7406 Who may acquire communication services.

(a) The general authority of the Head of a Contracting Activity contained in FAR 1.601 includes the acquisition of communication services. In addition, the Administrator, General Services Administration, has delegated to the Secretary of Defense under the terms of the Federal Property and Administrative Services Act, as amended, authority to enter into contracts for communication services extending beyond the fiscal year, but not longer than ten years under the following circumstances:

(1) The Government obtains lower rates, larger discounts, or more favorable conditions of service than those available under a contract for a definite term not extending beyond the current fiscal year; or

(2) Nonrecurring or termination charges payable under contracts for a definite term not extending beyond the current fiscal year are eliminated or reduced; or

(3) The carrier refuses to render the desired service except under contract for a definite term extending beyond the current fiscal year.

(b) The Secretary of Defense has delegated the authority to him by the Administrator, GSA, to the Secretaries of the Military Departments and the Director, Defense Communications Agency, who have in turn delegated it to the following (with power of redelegation):

(1) For the Department of the Army: The Commanding General, United States Army Information Systems Command.

(2) For the Department of the Navy: The Commander, Naval Facilities Engineering Command;

(3) For the Department of the Air Force: The Deputy Chief of Staff, Research Development and Acquisition; and the Director of Contracting and Manufacturing Policy, DCS/RD&A, HQ USAF;

(4) For the Defense Communications Agency: The Chief, Defense Commercial Communications Office;

(5) For the Defense Logistics Agency: for the leasing of local telecommunications facilities and services, Commanders of DLA centers, depots, and DCAS regions; and

(6) For the Defense Nuclear Agency: for contracts not in excess of $1,000,000, The Commander, Field Command, DNA.

(c) The ten-year limitation of (a) above does not apply to "general contracts" (see 237.7408) but to obligating the Government for a longer period than ten years by orders placed under the general contract.

237.7407 Cost or pricing data.

(a) Rates or preliminary estimates quoted by a common carrier for tariffed services are considered to be prices set by regulation within the provisions of Pub. L. 87-653, even if the tariff will not be established until after execution of the contract. Accordingly, except as provided in (b), common carriers are not required to submit cost or pricing data prior to award of contracts for tariffed services. On the other hand, rates or preliminary estimates quoted by a common carrier for nontariffed service or by a noncommon carrier for any service are not considered to be prices set by regulation; and the provisions of Pub. L. 87-653 and FAR 15.804 shall be applied accordingly.

(b) Even when not required by Public Law 87-653, certified cost or pricing data shall be obtained whenever the contracting officer is unable to determine that the prices are reasonable on the basis of price analysis (see FAR 15.805-2); however, certified cost or pricing data shall not be required for any communication service contract the total amount of which is $25,000 or less (see FAR 15.804-2). Situations in which cost or pricing data may be found necessary within the above policy are:

(1) A tariff, whether filed or contemplated to be filed is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(2) A tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(3) More than one commercial source (one or more of which is a noncommon carrier) can offer the desired service but price competition is not considered adequate;

(4) To support the reasonableness of special assembly rates and charges;

(5) To support the reasonableness of special construction and equipment charges;

(6) To support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(7) To support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination of Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(c) Cost or pricing data need not be obtained for each order in the case of services obtained by delivery order under a general call type contract which is negotiated for use by Government ordering activities and includes detailed and approved price schedules as a part of the general contract.

(d) As to the form and detail of cost or pricing data, the following will apply:

(1) For data submitted by common carriers, the data may be in the same form and detail normally submitted to the governmental regulatory body having jurisdiction over the carrier in question; provided, this form and detail is sufficient for the Government to make an adequate evaluation.

(2) For data submitted by other than common carrier, the data should be that required by FAR 15.8.

(e) In the case of noncommon carriers or common carriers quoting for services not to be furnished pursuant to tariff, the contracting activity shall require that the cost or pricing data be accompanied with a certificate as required in FAR 15.804-4. In the case of a common carrier furnishing service pursuant to a tariff filed or to be filed, the contracting activity shall require that data submitted pursuant to (b) above be accompanied with a certificate that to the best of the company's knowledge the data are accurate, complete, and a statement that either;

(1) The rates for services in question are based on these data which will be used or are currently being used to justify the tariff for such service; or

(2) The rates for services in question are not based on these data but are based upon filed tariffs.

The contracting activity shall inform carriers required to furnish cost or pricing data under this subparagraph (e) that the data and certifications will be used by the Government, if appropriate, in any subsequent proceedings relative to this tariffed service.

(f) If any noncommon carrier or any common carrier providing a service not to be furnished pursuant to tariff refuses to furnish cost or pricing data required under this paragraph, applications for waiver shall be processed in accordance with FAR 15.804.

[51 FR 46272, Dec. 23, 1986, as amended at 55 FR 19080, May 8, 1990; 55 FR 39971, Oct. 1, 1990]

237.7408 Type of contract.

237.7408–1 General.

Generally, the procurement of communication services is facilitated by a contractual arrangement which (a) permits the activities served to order services directly from time to time as specific requirements are developed; and/or (b) provides a written instrument of understanding between the Department of Defense or a contracting activity and the contractor which sets forth the basis under which future procurements will be entered into as required during the term of the agreement.

237.7408–2 General agreements.

General agreements, referred to as "general contracts" within the communication industry, are widely used to facilitate awards for communication services. Such an instrument is not a contract, but rather represents a written instrument of understanding executed between a procurement activity and a communications contractor which sets forth the negotiated contract clauses and other matters which shall be applicable to future procurements entered into between the parties during the term of agreement. The general agreement together with the order issued thereunder (see 237.7408-3) represents the contract. General agreements shall not be used in any manner to restrict available competition. All general agreements will be executed in the name of the United States Government.

237.7408-3 Communication Service Authorization (CSA).

DD Form 428, Communication Service Authorization (CSA), or an electronic data processing substitute (when the volume of transactions necessitates preparation of orders by other than manual process, a format suitable for an electronic data processing system may be used in lieu of DD Form 428, provided that all essential elements of the DD Form 428 are incorporated) shall be used to order services under the general contract and to modify, cancel, or terminate services when a CSA has been used to establish the service. As a general rule, prices should be established prior to authorizing the contractor to begin work. However, when the contractor is allowed to begin work prior to pricing in accordance with this paragraph, an estimated price or ceiling shall be included; and the contractor and the contracting officer shall proceed with definitive pricing as soon as practicable. In addition, a CSA may be issued which includes a ceiling or a series of ceilings for the stated services. Normally, this type of CSA is called a "maximum limit authorization" in the communications industry. This maximum limit authorization also may provide, in addition to the established ceilings, limited authority to designated individuals to effect modifications in service within the dollar ceilings by the use of work orders designated for this purpose. Each CSA issued under a general agreement shall be subject to such reviews, approvals and determinations and findings specified in this Supplement as would be applicable if the CSA were a contract entered into apart from the general contract.

237.7408-4 Federal Supply Schedule contracts.

General Services Administration Federal Supply Schedule contracts covering communication services, including equipment and facilities incidental to the services, are optional for use by the Department of Defense and may be used in accordance with FAR 8.404 when it is not more advantageous to negotiate a separate contract. The DD Form 428 may be used as a delivery order.

237.7409 Funding of Communication Service Authorizations (CSA) under general contracts.

(a) Funding is a comptroller responsibility and shall be handled in accordance with appropriate Department of Defense comptroller related directives and departmental implementations thereof. The guidelines in (b) through (e) below are provided for the contracting officer's information.

(b) In acquisitions of communication services, unlike other types of acquisitions, obligations are usually recorded when the service starts or if and when a cancellation or termination is ordered. Thus funds are not obligated by the "general contract," but are ordinarily obligated by CSAs issued under the "general contracts" (see 252.237-7408, Ordering of Facilities and Services—Common Carriers).

(c) Each individual CSA establishes a basis for the obligation of funds to cover recurring charges for services to be provided during the fiscal year in which the CSA is issued, together with such onetime charges as are applicable to those services.

(d) The same CSA continues to be the basis for the obligation of funds when the same services are required to be continued into subsequent fiscal years. However, obligation of funds for recurring charges for such subsequent fiscal years must be subject to the availability of appropriations therefor; and in the event funds are not appropriated, a cancellation or termination CSA must be issued.

(e) The contracting officer, through his comptroller, must insure that funds are available at the time service is provided or at the time a cancellation or termination CSA is issued. FAR 32.702 does not apply to the issuance of CSAs.

[51 FR 46272, Dec. 23, 1986, as amended at 53 FR 38201, Sept. 29, 1988]

237.7410 Special construction.

237.7410–1 General.

(a) Special Construction, as defined by tariffs, normally involves the furnishing of some special service or facility by a common carrier incident to the performance of the basic service. Under a given tariff, this may include (1) moving or relocating specified equipment, (2) providing temporary facilities, (3) expediting provision of facilities, or (4) providing channel facilities which must be specially constructed to meet the requirements of the Government. The procurement of "special construction," as that term is used in the communication industry, shall be governed by the provisions of this part and shall not ordinarily be subject to the provisions of FAR Part 36.

(b) Special construction costs may take the following forms:

(1) Contingent liability for utilizing the services for a shorter period of time than the specified minimum to reimburse the contractor for his unamortized nonrecoverable costs and usually expressed in terms of a termination liability, as provided in the contract or by tariff;

(2) A one-time special construction charge;

(3) Recurring charges for constructed facilities;

(4) A minimum service charge;

(5) An expediting charge; or

(6) A move or relocation change.

(c) When a common carrier submits a proposal or quotation of charges which indicates that special construction will be necessary, he shall be required to submit a detailed special construction proposal as well. All special construction proposals shall be analyzed to (1) determine the adequacy of the proposed construction; (2) disclose excessive or duplicative construction; and (3) when different forms of charge are possible, insure that the form most advantageous to the Government is provided for.

(d) When possible, special construction charges should be analyzed and approved prior to provision of the service. If, because of operational requirements, prior approval is not possible and a contractor is authorized to proceed, a ceiling cost for the special construction shall be imposed. Special construction charges must be approved and authorized prior to total payment thereof.

(e) Special construction provisions shall be administered by the contracting officer issuing the CSA. This involves administration of the cost and payment provisions, recording the unamortized termination liabilities (if any), and monitoring minimum service charges (MSC) reuse of MSC facilities—all in coordination with the requiring Department, office or agency and with the Defense Contract Audit Agency, as appropriate.

237.7410–2 Applicability of construction labor standards to CSAs for special construction.

(a) The construction labor standards in FAR 22.4 ordinarily do not apply to "special construction." However, if the special construction includes construction (as defined in FAR 36.102) of a public building or public work, the construction labor standards may be applicable. Applicability must be determined under FAR 22.402.

(b) Individual CSAs which are subject to construction labor standards under FAR 22.402 shall specifically recite that fact.

237.7411 Special assembly.

(a) Special assembly is the designing, manufacturing, arranging, assembling or wiring of an item or items of equipment to provide service that cannot be provided with equipment normally employed for general use.

(b) Special assembly rates and charges shall be based on estimated costs and shall be negotiated prior to commencement of service whenever possible. When it is not possible to negotiate in advance, the initial rates and charges shall be preliminary and tentative only and shall be subject to adjustment to the extent appropriate at the time that final rates and charges are negotiated.

237.7412 Cancellation and termination.

(a) (1) Cancellation is the discontinuance of a requirement subsequent to the placing of an order, but prior to initiation of service.

(2) Termination is the discontinuation of a service for the convenience of the Government after the service has been initiated.

(b) Cancellation or termination charges shall be determined in accordance with the provisions of the applicable tariff or contract.

(c) At the conclusion of a cancellation or termination settlement negotiation, the contracting officer shall document the contract file as to the principal elements involved in the settlement and in a manner which will enable reviewing authorities to understand the appropriateness of the proposed settlement.

(d) Pursuant to the Cancellation or Termination of Orders clause, partial payments on cancellation or termination claims may be made prior to settlement under the applicable policy and procedures of FAR 49.112-1.

237.7413 Contract clauses.

(a) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common or a noncommon carrier is contemplated.

(1) The clause at 252.237-7400, Definitions (Communications);

(2) [Reserved]

(3) The clause at 252.237-7402, Access;

(4) The clause at 252.237-7403, Amendment of Contract; and

(5) The clause at 252.237-7404, Obligation of the Government.

(b) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract for communications services with a common carrier is contemplated.

(1) [Reserved]

(2) The clause at 252.237-7406, Continuation of Orders;

(3) The clause at 252.237-7407, Facilities and Services to be Furnished—Common Carriers;

(4) The clause at 252.237-7408, Ordering of Facilities and Services—Common Carriers;

(5) The clause at 252.237-7409, Rates, Charges, and Services-Common Carriers;

(6) The clause at 252.237-7410, Payment—Common Carriers;

(7) The clause at 252.237-7411, Tariff Information;

(8) The clause at 252.237-7412, Cancellation or Termination of Orders—Common Carriers;

(9) The clause at 252.237-7413, Reuse Arrangements;

(10) The clause at 252.237-7414, Submission of Cost or Pricing Data—Common Carriers;

(11) The clause at 252.237-7415, Audit and Records—Common Carriers; and

(12) The clause at 252.237-7416, Term and Termination of Contract—Common Carriers.

(c) The contracting officer shall insert the following clauses, modified if necessary to meet the specific requirements of an appropriate governmental regulatory agency or when the basic intent is not changed, in solicitations and contracts when a contract with a common or a noncommon carrier is contemplated and when special construction charges are expected:

(1) The clause at 252.237-7417, Special Construction and Equipment Charges; and

(2) The clause at 252.237-7418, Title to Communication Facilities and Equipment.

Subpart 237.75—Services of Students at Research and Development Laboratories

237.7500 Scope.

This subpart prescribes procedures for the acquisition by contract under the authority of 10 U.S.C. 2360, of the temporary or intermittent services of students at institutions of higher learning for the purpose of providing technical support at defense research and development laboratories.

237.7501 Definitions.

For the purpose of this subpart, the following terms are defined:

Institution of Higher Learning. An institution of higher learning means any public or private post-secondary school, junior college, college, university, or other degree granting educational institution located in the United States, its possessions, and Puerto Rico with an accredited education program approved by an appropriate accrediting body and offering a program of study at any level beyond that of high school.

Nonprofit Organization. A nonprofit organization means any organization described by section 501(c)(3) of title 26 of the United States Code which is exempt from taxation under section 501(a) of title 26.

Student. A student means an individual who is enrolled (or has been accepted for enrollment) prior to the term of the student technical support contract and remains in good standing at an institution of higher learning in a curriculum designed to lead to the granting by that institution of a recognized degree, during the term of the contract.

Technical Support. Technical support means any scientific or engineering work in support of the mission of the DoD laboratory involved. It does not include services of an administrative or clerical nature.

237.7502 Policy.

These contracts shall not be used solely to circumvent personnel ceilings or to provide for an increase in the civilian workforce.

237.7503 General.

Pursuant to this subpart, acquisition of services of students at institutions of higher learning generally shall be acquired by contract between a nonprofit organization employing the student and the Government. When it is in the best interest of the Government to do so, however, contracts may be made directly with students.

(a) *Special considerations.* Any contract entered into pursuant to this subpart shall be considered to be a nonpersonal service contract for the purposes of FAR part 13. Such contracts are not subject to the provisions of FAR 19.202, 19.501, 19.508(a), or FAR 13.105.

(b) *Contract authority.* Contracts under this subpart shall cite 10 U.S.C. 2304(a)(1) and 10 U.S.C. 2360 as authority for award.

237.7504 Contract clauses.

Any contract with an individual student made pursuant to this subpart shall contain the clauses at FAR 52.232-3, Payments Under Personal Services Contracts, and FAR 52.249-12, Termination (Personal Services).

PART 238—FEDERAL SUPPLY SCHEDULE CONTRACTING

No DoD FAR Supplement.

PART 239—ACQUISITION OF INFORMATION RESOURCES

See Part 270.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 242—CONTRACT ADMINISTRATION

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Subpart 242.73—Contract Insurance/Pension Review (CIPR)

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46286, Dec. 23, 1986, unless otherwise noted.

Subpart 242.1—Interagency Contract Administration and Audit Services

242.101 Policy.

(d) *Reimbursement.* (1) Except as noted in (2) and (3) below, reimbursement for services shall be required from non-DoD organizations covered by this part at the current standard rate determined by the Assistant Secretary of Defense (Comptroller).

(2) Reimbursement is not required for quality assurance, inspection, and contract audit services under an effective reciprocal agreement which provides for such services to be rendered on a no-charge basis.

(3) Reimbursement is not required for services performed under contracts awarded by the Small Business Administration in accordance with FAR Subpart 19.9.

(4) Request for exceptions other than those noted in (2) and (3) above shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

242.102 Procedures.

(S-70) *Department of National Defense Production (Canada).* (1) Department of Defense components shall, upon direct request, provide contract administration services to the Department of National Defense Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 242.102(S-71).

(2) Performance without charge of contract administration services by the Department of National Defence Production (Canada) for the U.S. Department of Defense components is provided for in 225.7105 concerning Canadian purchases.

(S-71) *Foreign Governments and International Agencies.* (1) *Performance of Services in the United States.* Department of Defense contract administration services components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

(2) *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Contract Administration Services Region (DCASR), New York, NY, which is the designated CCP. The CCP will—

(i) Determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;

(ii) Determine that the services requested are consistent with Department of Defense mutual security program policies (questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));

(iii) Assure that the reimbursement arrangements are consistent with 242.101(d);

(iv) Determine that the requested services can be provided, and acknowledge receipt of the request;

(v) Distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

(S-72) *Performance of Services Outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies, shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

(S-73) *Payment for Services Rendered.* Department of Defense components shall pay for services rendered at the rate established by the performing activity for such services, except where formal agreements provid[illegible]r reciprocal performance without [illegible]bursement. When services are re[illegible]ed from foreign government[illegible]d international organizations, DoD components should check with the Office of the Assistant Secretary of Defense (Comptroller) to determine whether any reciprocal agreements are in effect which would preclude payment for services requested.

Subpart 242.2—Assignment of Contract Administration

242.203 Retention of contract administration.

(a) When any field contract administration service is required, the contract will be assigned for administration regardless of dollar value.

(2) The purchasing office may retain responsibility for administration of contracts listed below:

(i) Contracts of or in support of the National Security Agency;

(ii) Contracts for coal or bulk petroleum;

(iii) Research and development contracts;

(iv) Grants;

(v) Contracts for flight training;

(vi) Contracts for headstones and gravemarkers;

(vii) Contracts for industry technical representatives;

(viii) Contracts for consultant support services;

(ix) Geodetic mapping, air charting, and information center contracts;

(x) Base, post, camp, and station purchases;

(xi) Contracts for operation or maintenance of, or installation of equipment at radar or communications network sites, e.g., SAGE, BMEWS, JCSAN, WHITE ALICE, etc.;

(xii) Communications service contracts;

(xiii) contracts for installation, operation and maintenance of spacetrack sensors and relays;

(xiv) Dependents Medicare Program contracts;

(xv) Stevedoring contracts;

(xvi) Contracts for construction and maintenance of military and civil public works, including harbors, docks, port facilities, military housing, development of recreational facilities, water resources, flood control, and public utilities;

(xvii) Architect-engineer (A-E) contracts;

(xviii) Contracts for airlift and sealift—Military Airlift Command and Military Sealift Command may perform contract administration services at contractor locations involved solely in performance of airlift or sealift contracts;

(xix) Contracts for subsistence supplies;

(xx) Ballistic missile site contracts—supporting administration of these contracts may be performed at missile activation sites during the installation, test, and checkout of the missiles and associated equipment; and

(xxi) Contracts for operation and maintenance of, or installation of equipment at, military test ranges, facilities, and installations.

(b) To avoid duplication of field contract administration capability, except for the performance of (xviii) and (xx) above, contract administration personnel from the purchasing office shall not be located at contractors' facilities. If field assistance from a DoD contract administration services component is needed in the administration of these contracts, such assistance will be requested by assignment of supporting contract administration to the contract administration offices listed in DoD Directory 4105.59-H as cognizant of the contractor's facility (facilities) at which the supporting contract administration function(s) is required. Specific instructions as to the assistance needed will be furnished. If field assistance is needed in the performance of the major portion of applicable contract administration functions, the contract will be reassigned to the cognizant contract administration office.

242.204 Supporting contract administration.

(a) Generally, the office for performing supporting functions shall be selected from the list in DoD Directory 4105.59-H. However, in special circumstances (for example, when contractor's work site is a military base), a component of a military command not listed in DoD Directory 4105.59-H may be selected to perform supporting contract administration when prior coordination between the offices concerned has indicated that such an arrangement is feasible and that adequate resources are available, but see 242.270. Where supporting contract administration is required on a contractor purchase order or subcontract which includes FMS requirements, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity, and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

242.205 Designation of the paying office.

(a) *Defense Contract Administration Services disbursing office.* Contracts assigned to an office of Defense Contract Administration Services for administration shall also specify disbursement by the cognizant Defense Contract Administration Services Regional Office if funded with DoD funds (i.e., Department codes 17 (Navy), 21 (Army), 57 (Air Force), 97 (OSD, including Defense Agencies), and 43 (Civil Defense)). For any other department or agency funds, the payment office serving that department or agency must be cited for the portion of the contract covered by non-DoD funds, even though the contract is otherwise wholly administered by the DCASR.

(b) *Other disbursing office(s).* Any contract not assigned to a Defense Contract Administration Services Office for administration shall designate a disbursing office in accordance with Departmental or Agency regulations. Such contract, if issued for requirements of more than one Department or Agency, may provide for payment by more than one disbursing office.

(c) *Disbursement for Air Force missile propellant contracts.* The Department of the Air Force shall retain the disbursement function on all contracts for Air Force missile propellants.

242.270 Contracts requiring performance of contract administration services (CAS) on military installations.

(a) Contract administration functions on a military installation are normally performed by the installation commander who is responsible for its continued operation as a military base. Where work on the military installation is unrelated to the base mission and requires skills and resources which exceed the installation commander's capability, DCAS shall, upon request by the relevant service, provide the required contract administration functions. When a contractor's normal place of industrial operation is located on a military base because of the availability of real estate or the existence of an industrial facility on that base, DCAS shall have cognizance of that facility, unless cognizance has otherwise been assigned to a Military Department in accordance with DoDI 4105.59.

(b) The Military Departments shall coordinate their Departmental contract administration efforts so as to avoid mixed contract administration arrangements which result when more than one CAS activity performs CAS at the same military installation.

(c) DCAS shall provide preaward survey assistance for post, camp, and station work performed on military installations. The purchasing office and the DCAS preaward survey monitor shall jointly determine the scope of the survey and individual responsibilities.

(d) All requests from the Military Departments for Defense Logistics Agency/Defense Contract Administration Services support under (a) above should be coordinated to ensure availability of the capability and resources for performing requested functions.

Subpart 242.3—Contract Administration Office Functions

242.302 Contract administration functions.

(a)(11) (ii) & (iii) For those contractors with which the TriService Contracting Officer negotiates advance agreements pursuant to FAR 42.10, he shall have full authority for determinations related to CAS 420.

(a)(39) For contracts containing ammunition and explosive requirements, see 223.70.

(S-70) Perform industrial readiness and mobilization production planning field surveys and schedule negotiations.

(S-71) Perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria, provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform post acceptance surveillance to ensure continuing operation of contractors' accepted systems. (See 234.005-70.)

(S-72) Monitor the contractor's costs as prescribed under Subpart 42.70.

(S-73) In connection with the provisions of paragraph (b) of the clause at FAR 52.225-10, Duty-Free Entry, and paragraph (c) of the clause at 252.225-7008, Duty-Free Entry—Qualifying Country End Products and Supplies, negotiate and issue appropriate contract modifications reducing contract prices.

(S-74) Reserved.

(S-75) Review contracting estimating systems.

(S-76) Evaluate contractor material management and accounting systems as prescribed in Subpart 242.72.

[51 FR 46286, Dec. 23, 1986, as amended at 53 FR 8910, Mar. 18, 1988; 53 FR 38196, Sept. 29, 1988; 54 FR 20593, May 12, 1989]

Subpart 242.4—Correspondence and Visits

242.402 Visits to contractors' facilities.

(a) If access to classified information will be involved, the contractor must be given advance notice, in writing, as required by the Industrial Security Regulation (DoD 5220.22-R).

Subpart 242.5—Postaward Orientation

242.503-1 Postaward conference arrangements.

(a)(2) The agenda of the postaward conference may include such matters as are indicated on DD Form 1484.

242.503-2 Postaward conference procedure.

The chairperson shall use the DD Form 1484 in conducting the conference to assure that all significant matters are covered.

242.503-3 Postaward conference report.

The chairperson may use the DD Form 1484 as the summary report where appropriate.

Subpart 242.6—Corporate Administrative Contracting Officer

242.602 Assignment and location.

(a) When a corporate entity has divisions under the contract administration cognizance of more than one Department, CACO assignments shall be determined by the Department concerned. When agreement cannot be reached, the matter shall be referred to the DUSD(AM), Office of Under Secretary of Defense, Research and Engineering, for resolution.

[51 FR 46286, Dec. 23, 1986, as amended at 53 FR 38196, Sept. 29, 1988]

242.603 Responsibilities.

CACOs perform the CAS functions in FAR 42.302 at the corporate level when a corporate level involvement exists. In ensuring the uniform and consistent treatment of corporate costs charged to the Government by all business segments of the corporation, the CACO should maintain close coordination with business segment ACOs.

[53 FR 51561, Dec. 22, 1988]

Subpart 242.7—Indirect Cost Rates

242.705 Final indirect cost rates.

242.705-1 Contracting officer determination procedure.

(a)(1) When a multi-divisional contractor has a CACO, the decision as to whether final overhead rate negotiations will be on a coordinated or centralized basis will be made jointly by the CACO and the individual ACO's based upon the degree of centralization within the contractor complex and the requirements of the parties concerned. When negotiations are conducted on a coordinated basis, individual ACO's are responsible for coordinating with the CACO to assure consistency of cost determinations.

(b)(1) In addition to submitting a final indirect cost proposal to the contracting officer, the contractor shall also submit a copy of the proposal to the cognizant auditor.

(b)(3) Particularly when there is a significant difference of opinion between the Government and contractor concerning the allowability or reasonableness of indirect costs or the acceptability of the bases used in developing the overhead rates, representatives of the audit activity, the technical activity, and the contracting officer will discuss the areas of disagreement prior to the negotiation conference with the contractor. Special attention should be directed to those issues which impact prospective and subsequent final overhead rate determinations. Such issues should be resolved in order to preclude repetitive consideration of the same items.

(b)(5)(i) The Contracting Officer shall:

(A) Not resolve any questioned costs until he has obtained—

(*1*) Adequate documentation with respect to such costs; and

(*2*) The opinion of the defense contract auditor on the allowability of such costs;

(B) Ensure that the defense contract auditor, to the maximum extent practicable, is present at any negotiation or meeting with the contractor regarding a determination of final indirect cost rates of the contractor;

(C) Ensure that all categories of costs designated in the report of the defense contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are considered allowable will be reflected in the negotiation memorandum; and

(D) Notify the contractor which individual costs were considered unallowable and the respective amounts of the disallowance.

242.705-2 Auditor determination procedure.

(b)(2)(iii) The agreement shall be signed by the contractor and the auditor-in-charge.

(b)(2)(v) If, under the auditor determination procedure, agreement with the contractor cannot be reached, the auditor, in addition to submitting an advisory audit report to the contracting officer pursuant to FAR 42.705-2(b)(iv), will issue DCAA Form 1 detailing the items of exception to which the contractor can submit a request in writing to the cognizant ACO to reconsider the auditor's determination.

242.705-3 Educational institutions.

(a)(3) In addition to following the procedure in FAR when negotiating postdetermined final indirect cost rates, the contracting officer shall also follow the guidance in 242.705-1(b).

242.706 Distribution of documents.

(a) One executed copy of the overhead rate agreement will be furnished to the contractor, the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. In addition, copies will be distributed to other Departments, and (upon specific request) any other interested Government agencies. Departments may make further distribution to activities within their departments and shall insert one copy in each contractor general file (see S-101.2 and S2-102.4).

(b)(1) One copy of the overhead negotiation memorandum, if prepared under contracting officer determination procedures, or the audit report, if prepared under auditor determination procedures, will be furnished to the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. Upon specific request, a copy will be furnished to other Departments or Government agencies.

242.770 Certification of indirect costs.

(a) *Policy.* (1) No proposal to establish billing rates or final indirect cost rates shall be accepted unless such costs have been certified by the contractor using the Certificate of Indirect Costs set forth in paragraph (d) below. The certificate must be signed on behalf of the firm by an individual of the contractor's organization at a level no lower than vice president or chief financial officer of the business segment of the contractor that submits the proposal.

(2) No billing rate or final indirect cost rate shall be agreed to by the contracting officer or auditor based on a proposal from the contractor that has not been certified. Where it is necessary to establish billing or final indirect cost rates in order to comply with the terms of a contract and the contractor has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Government shall unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that has been furnished to the contracting officer or auditor and for which it can be demonstrated that all unallowable costs have been excluded. When billing or final indirect cost rates are unilaterally established by the Government because of failure of the contractor to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

(b) It shall be the responsibility of the cognizant contracting officer or auditor to review billing rates periodically for indirect costs and all circumstances affecting the level of indirect cost rates. Generally, billing rates shall not be in effect for longer than one year. Final indirect cost rates shall be established promptly after the end of the applicable year.

(c) *Waiver.* (1) The Secretary of Defense or the Secretary of the military department concerned may, in an exceptional case, waive the requirement for certification under paragraph (a) in the case of any contract if the Secretary—

(i) Determines in such case that it would be in the interest of the United States to waive such certification; and

(ii) States in writing the reasons for that determination and makes such determination available to the public.

(2) Examples of situations where it may be appropriate to waive the requirement for certification of indirect costs include, but are not limited to contracts with:

(i) Foreign governments or international governmental organizations, such as subsidiary bodies of NATO;

(ii) State and local governments that are subject to OMB Circular A-87;

(iii) Educational institutions subject to OMB Circular A-21; or

(iv) nonprofit organizations subject to OMB Circular A-122.

(d) *Certificate.* The certificate required by this section shall be in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that to the best of my knowledge and belief:

1. I have reviewed the indirect cost proposal submitted herewith;
2. All costs included in this proposal (identify, date) to establish billing or final indirect costs rates for (identify period covered by rate) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Department of Defense applicable to those contracts;
3. This proposal does not include any costs which are unallowable under applicable cost principles of the Department of Defense, such as (without limitation): advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and good will; and
4. All costs, included in this proposal are properly allocable to Defense contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: ______________________________

Signature: __________________________

Name of Corporate Official: __________

Title: ______________________________

Date of Execution: __________________

242.770-1 Clause.

The contracting officer shall insert the clause at 252.242-7003, "Certification of Indirect Costs" in all solicitations and contracts which provide for (a) interim reimbursement of indirect costs, (b) establishment of final indirect costs rates, or (c) contract financing that includes interim payment of indirect cost (e.g., progress payments based on cost and payments based on percentage or state of physical completion such as shipbuilding).

242.771 Penalties for unallowable costs.

(a) 10 U.S.C. 2324 (a) through (d) prescribes penalties for submission of unallowable costs in proposals for settlement of indirect costs under Department of Defense contracts. (See subpart 231.70.)

(b) The ACO shall review all costs submitted in the contractor's proposal which are subsequently disallowed by the Government to determine whether a penalty should be assessed.

[53 FR 38238, Sept. 29, 1988]

Subpart 242.73—Contract Insurance/Pension Review (CIPR)

SOURCE: 53 FR 46458, Nov. 17, 1988, unless otherwise noted.

242.7300 Objective.

(a) This subpart sets forth the requirements for conducting a Contractor Insurance/Pension Review (CIPR). A CIPR is an in-death evaluation of a contractor's insurance program, pension plan(s), other deferred compensation plans, and related policies, procedures, practices, and costs. The Defense Logistics Agency (DLA) is the designated Department of Defense Executive Agency for CIPRs. The Administrative Contracting Officer (ACO) is responsible for determining the reasonableness of insurance/pension costs to be considered on government contracts. Insurance/Pension Specialists (I/PSs) assigned to certain DLA Defense Contract Administration Services Regions (DCASRs) are responsible for assisting contracting officers in making these determinations by conducting CIPRs.

(b) The CIPR should be the only formal review of a contractor's insurance/pension program, except for periodic tests of the system performed by contract administration and DCAA, or any special reviews which the ACO may initiate. If any organization believes that additional reviews of the contractor's insurance/pension program should be performed, that request should be conveyed to the ACO. The ACO should perform the review as part of an ACO-initiated special review, or, if possible, as part of the CIPR if one is scheduled to be conducted in the near future.

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242.7301 Requirements.

(a) Initial and biennial CIPRs will be performed at contractor locations that have actual or anticipated annual sales to the Government of $10 million or more on negotiated prime contracts, contract modifications, and subcontracts under Government prime contracts. However, it may be appropriate to conduct CIPRs on a more or less frequent basis under certain circumstances, e.g., prior to a major contract award, in conjunction with in-depth overhead reviews or subsequent to mergers or divestitures.

(b) Special reviews may be performed on selected insurance and pension elements at those contractors that do not meet the criteria for an initial review, but where significant problems have been identified. Also, these reviews may be performed to follow-up contractor implementation of recommendations from prior reviews and to verify Government recovery of credits.

(c) During the period of time between team reviews, the Government may perform any additional review necessary to establish the validity of Government costs.

242.7302 Responsibilities.

(a) The ACO is responsible for:

(1) Determining the need for a CIPR in accordance with sections 242.7300 and 242.7301.

(2) Requesting and scheduling the reviews with the appropriate DLA activity.

(3) Notifying the contractor of the proposed date, purpose of the CIPR, and obtaining from the contractor information needed by the I/PS.

(4) Advising the contractor of the results of the CIPR after receipt of the approved CIPR report.

(5) Providing other interested contracting officers copies of letters to the contractor or reports detailing the results of the CIPR.

(6) Advising the contractor that any significant changes in insurance/pension plans must be submitted to the ACO for review and acceptance prior to making the changes.

(7) Assuring adequate follow-up on all CIPR recommendations.

(b) DLA is responsible for:

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the Military Departments and DCAA a copy of the schedule.

(2) Heading the team that conducts the review.

(3) Reviewing the documentation and ensuring that documentation (e.g., CIPR work papers and files) is complete.

(4) Reviewing and approving all CIPR reports.

(5) Preparing and distributing the final CIPR reports. In the event there is a discrepancy between the audit report and the draft CIPR report, every effort will be made to resolve such discrepancy before a final CIPR report is issued to the contracting officer.

(6) Providing the final audit report as an attachment to the CIPR report.

(7) Preparing the draft letter for the contracting officer's use in notifying the contractor of CIPR results.

(8) Advising the ACO and other DCASRs or Military Department representatives concerning any insurance/pension matters when requested.

(c) The Defense Contract Audit Agency (DCAA) is responsible for:

(1) Participating as a member of the CIPR team.

(2) Submitting information and advice to the team based on DCAA's analysis of the contractor's books, accounting records and procedures or other related data.

(3) Issuing an audit report to the CIPR Team Captain for incorporation into the final CIPR report.

Subpart 242.8—Disallowance of Costs

242.801 Notice of intent to disallow costs.

(e) A Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate expense.

242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.* This procedure is applicable only for Cost-Reimbursement Type Contracts involving Canadian Contractors (see 225.7104(c)).

(1) On contracts with the Canadian Commercial Corporation (CCC), CCC will certify and forward the invoice with Standard Form 1034 (Public Voucher) to the ACO for further processing and transmittal to the disbursing officer.

(2) On contracts placed directly with Canadian firms, invoices, as provisionally approved by the ASB/DSS auditor and accompanied by Standard Form 1034 (Public Voucher), are forwarded to the ACO for further processing and transmittal to the disbursing officer. In the event that costs claimed are suspended or disapproved, the ACO shall issue the DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved" to the contractor. DCAA Form 1 will be processed in the same manner as indicated in FAR 42.803(b)(3) with regard to contractor appeals.

(b) *Auditor receipt of vouchers.*

(1) and (2) The contract auditor is the authorized representative of the contracting officer for these functions, except that vouchers are approved for provisional payment and transmitted to the cognizant disbursing officer (but see 242.803(a) for certain Canadian contracts). DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved", shall be used for this purpose. In addition, the contracting officer may direct the issuance of DCAA Form 1 with respect to any cost that he has reason to believe should be suspended or disapproved. The contract auditor will approve fee portions of voucher for provisional payment in accordance with the contract schedule and any instructions received from the administrative contracting officer. Completion vouchers shall be forwarded to the ACO for approval and transmittal to the cognizant disbursing officer.

Subpart 242.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

242.1005 Lead negotiating agency responsibilities.

(b) The technical evaluation, performed or arranged for by the lead negotiating agency, shall include an opinion as to the potential relationship of the proposed IR&D program to relevancy requirements established under 231.205-18.

(c) The contractor shall be provided a contracting officer's determination concerning the potential relationship of proposed IR&D/B&P projects to the relevancy requirements established under 231.205-18.

242.1006 Conducting negotiations.

(a) In negotiating ceilings, the contracting officer shall pay attention to the determination of the potential relationship of the company's IR&D/B&P to a military function or operation.

242.1007 Content of advance agreements.

Advance agreements negotiated in accordance with this subpart shall include, where appropriate:

(S-70) A statement that a relevancy review has been performed and a determination made that the Government's allocable share of the negotiated ceiling(s) passes the relevancy test at the time of negotiation.

(S-71) For those companies meeting the threshold requirements, a provision that the recovery of IR&D/B&P costs under Government contracts shall not exceed the lesser of (i) such contracts' allocable share of incurred costs up to the total ceiling or (ii) the amount of incurred costs having a potential relationship to a Government function or operation.

242.1008 Administrative appeals.

Each Department will establish an appeals hearing group consisting of an acquisition member, who shall be chairman, a technical member and a legal member. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense. Members shall be appointed as follows:

(S-70)(1) *For the Army.* The Deputy Assistant Secretary (Acquisition) will appoint the acquisition member. The Deputy Assistant Secretary (Research, Development and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S-70)(2) *For the Navy.* The Principal Deputy Assistant Secretary (Shipbuilding and Logistics) will appoint the acquisition member. The Principal Deputy Assistant Secretary (Research, Engineering and Systems) will appoint the technical member. The Deputy General Counsel (Logistics) will appoint the legal member.

(S-70)(3) *For the Air Force.* The Deputy Assistant Secretary (Acquisition Management) will appoint the acquisition member. The Deputy Assistant Secretary for Systems will appoint the technical member. The Assistant General Counsel (Procurement) will appoint the legal member.

(S-70)(4) *For the Defense Logistics Agency (DLA).* The Director, DLA (or the Deputy Director, DLA) will appoint the acquisition member, the technical member, and the legal member.

Subpart 242.11—Production Surveillance and Reporting

242.1101 General.

Delinquency includes—

(a) Actual failure by the contractor, that is, his failure, regardless of reason, to meet the contract delivery or performance schedule; and

(b) Potential failure by the contractor, that is, his failure, regardless of reason, to maintain such progress in contract performance as is required to meet his contract delivery or performance schedule.

242.1104 Surveillance requirements.

(a)(S-70) *Initial contract review.*

(i) The contract administration office shall, during initial contract review, assign contracts to production surveillance or review categories as follows:

(A) Category 1 is conducted by an industrial specialist or other person qualified to assess the contractor's plan for production and evaluate progress toward the successful accomplishment of that plan. This type of effort is adaptable to contracts which have a production/performance lead time of at least several months, and which entail identifiable milestone or pacing events against which progress may be measured. Contracts assigned this category should include those contracts which are of the complexity described under FAR 42.1104(a) and have a Criticality Designator A or are with a contractor which has either a history of generally poor production performance or a poor performance history on the same or similar supplies or services as those on the current contract.

(B) Category 2 is conducted by personnel qualified to assess information provided by the contractor in terms of delivery probability. They may be assisted by industrial specialists or other technically qualified personnel who will visit the production facility when there is probability of failure by the contractor to deliver or perform according to schedule, or when contractor-furnished information is questionable, or in other occasions when the assistance of technical personnel may contribute to the avoidance or minimizing of a delinquency. This category of surveillance entails, as a minimum, a written or telephonic reminder to the contractor in advance of the required delivery or performance date(s) including inquiry as to whether he will perform on schedule or as to the cause and duration of any anticipated delay, and periodic followup and expediting of supplies or services not delivered or performed on time. This category is adaptable to contracts which warrant surveillance effort by the Government in advance of the required due date. Any contract with a Criticality Designator A not assigned to Category 1 shall be assigned to Category 2. All Criticality Designator B contracts and those Criticality Designator C contracts placed with contractors having a history of generally poor production performance shall also be assigned to this category.

(C) Category 3 is conducted by the same personnel assigned Category 2 contracts. This category of surveillance entails inquiry and expediting effort after a failure to deliver or perform within the contract schedule has occurred, and periodic followup. It may involve assistance by technical personnel.

(ii) Regardless of assigned category, if a contract is reported by DD Form 375, Production Progress Report, as delinquent or anticipated to become delinquent, the surveillance efforts will provide continuous knowledge of the status of the problems causing the delinquency and of the corrective efforts being taken.

(iii) If Category 1 is assigned to a contract, the contract administration office shall also:

(A) Review the contract in conjunction with any preaward survey (see FAR 9.1) to ascertain what contract performance difficulties may be expected.

(B) Determine the extent of postaward orientation required in the production area (see FAR 42.5).

(C) Determine any special procedures to be followed.

(b) The contract administration office shall determine, in accordance with FAR 42.1104(a), the extent of production surveillance required regardless of dollar value.

(d) After delinquency has occurred, and before the PCO has determined the action to be taken, it is particularly important that surveillance be limited to fact finding to avoid waiver of the contract delivery and performance schedules.

242.1105 Assignment of criticality designator.

(a) The assigned designator may be changed only by the purchasing office. Ordinarily, unilateral purchase orders shall be assigned Criticality Designator C.

(b) DoD contract items on which a priority 01, 02, 03, or 06 (if emergency supply of clothing) has been assigned based on DoDD 4410.6, Uniform Material Movement and Issue Priority System shall fall under Criticality Designator A.

242.1106 Reporting requirements.

(b)(1) If the contractor's report indicates that the contract schedule will be met and the contract administration office concurs, no further report by the contract administration office is required.

(2) If, on the other hand, either the contractor forecasts delivery or performance failure, or the contract administration office does not concur in the contractor's no failure report, and in either case the delay is expected to be for more than 30 days, or purchasing office action, in any case, is deemed necessary, the contract administration office shall add an endorsement and forward a copy to the purchasing office and to the inventory control manager unless otherwise specified in the contract, within 4 working days after receipt of the contractor's report. The endorsement shall include:

(i) Comments as to nonconcurrence, if applicable;

(ii) Action taken by the contractor and by the Government to overcome the anticipated or actual delinquency.

(iii) Action required—a positive recommendation to the purchasing office of the action necessary to correct the delinquency, including any realistic schedule revision which can be met by the contractor and the extent to which the contractor may have excusable cause of delay. When other actions are indicated, such as those leading to default termination, the contract administration office shall indicate specific dates by which Government action should be taken to preserve the Government's rights.

(c) *Reports initiated by contract administration offices.* Reports may be furnished by use of:

(1) DD Form 375-2, or DLA Form 1654 (Test), Delay in Delivery (Flash Notices); or

(2) DD Form 375, Production Progress Report and DD Form 375c (continuation).

(d) The contracting officer, or designee, shall acknowledge receipt of the report initiated by the contract administration office. This acknowledgement shall be timely and, if deemed appropriate by the contracting officer, in writing.

[51 FR 46286, Dec. 23, 1986, as amended at 53 FR 38243, Sept. 29, 1988]

242.1107 Contract clause.

(b)(1) Contract schedule provisions supporting the clause at FAR 52.242-2 shall contain but not be limited to instructions relative to:

(i) The frequency and timing (normally 5 working days after each reporting period) of reporting;

(ii) The contract line items, exhibits, or exhibit line items for which reporting is required;

(iii) Offices and mailing addresses to which reports shall be sent including the purchasing office, the contract administration office (3 copies), status control activities and inventory managers, if appropriate; special requirements as to codes and formats.

(2) When reporting an actual or potential delinquency, the contractor-prepared DD Form 375c shall, as a minimum, contain the following data:

(i) Problem—a statement of the difficulty, the reasons therefor, and whether caused by the Government or the contractor;

(ii) Items and quantities affected;

(iii) Date of commencement of the anticipated or actual delinquency;

(iv) Action taken by the contractor to overcome the anticipated or actual delinquency.

(v) Estimated recovery date based upon evaluation of the factors contributing to the delinquency; and

(vi) A realistic schedule revision which can be met by the contractor. In the absence of an actual or potential delinquency, the DD Form 375c may be used to provide any information which the contractor deems appropriate.

Subpart 242.12—Novation and Change-of-Name Agreements

242.1203 Processing agreements.

(b)(1) Notice shall be provided to the Departments and Defense Agencies and NASA having contracts with the contractor or contractors concerned. The notice shall include the list of contracts required by FAR 42.1204(c)(2). Each list need contain only those contracts issued by purchasing offices of the addressee. Such notice shall be transmitted to the appropriate addressee listed below. In the case of contracts awarded by Departments or agencies not listed below, the notice shall be furnished directly to the cognizant contracting or contract administration office.

Department of the Army: HQ U.S. Army Materiel Command, Attn: AMCC-P, 5001 Eisenhower Avenue Alexandria, VA 22333-0001

Department of the Navy: Office of the Assistant Secretary of the Navy (S&L), Contracts and Business Management (CM-N), Washington, DC 20360-0005

Department of the Air Force: HQ, U.S. Air Force Systems Command, Attn: PKCP, Andrews AFB, DC 20334-5000

National Aeronautics and Space Administration, Assistant Administrator for Procurement, Attn: HR, Washington, DC 20546.

(c) Where substantial alterations or additions to the formats shown at FAR 42.1204(e) and FAR 42.1205(b) are considered appropriate by the cognizant ACO processing the proposed agreement, coordination will be made with the appropriate addressees listed above involved prior to execution. Any objection shall be resolved before the agreement is executed. If, for any reason, NASA indicates a desire to consummate a separate agreement with the contractor, the cognizant ACO shall continue to process the agreement only for the Departments and Defense agencies concerned.

(e)(S-70) In addition to the distribution prescribed in FAR 42.1203(e), two copies of the agreement will be sent to the appropriate addresses listed in (b)(1) above. When the ACO responsible for the corporate office is the cognizant ACO, one copy will be distributed to each CAO responsible for contract administration at a plant or division. The CAO will, in turn, reproduce and distribute copies for each of its affected contracts. Each purchasing office will reproduce the necessary number of copies of the administrative change and will make distribution as determined necessary by that office. Reproduction and distribution of copies for CAOs will be accomplished by the ACO who executed the administrative change.

(e)(S-71) Novation and change-of-name agreements amending contracts and basic agreements for storage and related services for personal property of military and civilian personnel shall be forwarded to the cognizant area command of the Military Traffic Management Command as set forth below for execution without regard to other provisions.

Commander, Eastern Area, Military Traffic Management Command, Attn: MTE-PPS, Bayonne, NJ 07002

Commander, Western Area, Military Traffic Management Command, Oakland Army Base, Attn: MTW-PPS, Oakland, CA 94626

(f) NASA contracts shall not be included in this list since NASA will issue its own administrative change. A total of 2 copies of the administrative change, with the list of contracts affected, shall be furnished to the appropriate addressee(s) listed in (b)(1) above. Each list need contain only those contracts issued by purchasing offices of the addressee.

[51 FR 46286, Dec. 23, 1986, as amended at 53 FR 38176, 38196, Sept. 29, 1988]

Subpart 242.14—Traffic and Transportation Management

242.1402 Volume movements within the continental United States.

(a)(1)(i) On FMS shipments, the aggregate will be 200,000 pounds or more.

(a)(2)(S-70) As soon as production schedules and planned destinations have been established, the contracting officer should report this information to the transportation office serving the purchase office. The transportation office will review the contracts and report planned volume movements in accordance with chapter 201 of the Military Traffic Management Regulation (AR 55-355, NAVSUPINST 4600.70, AFM 75-2, MCO P4600 14A, DLAR 4500.3) (MTMR).

(S-71) The purchasing office shall forward a copy of the volume movement report to the contract administration office. The transportation office serving the CAO shall submit a volume movement report when:

(A) It is determined, upon review of the contract, that no volume movement report has been submitted by the purchasing office.

(B) Movement requirements are refined or changed to such a degree that a revised volume movement report should be submitted.

(S-72) On FMS shipments the volume movement report should also include the destination country, foreign forwarder, and port of embarkation, if known.

242.1403-1 U.S. Government Bills of Lading (GBLs).

(a) See 242.1472 for procedures whereby contractors shall obtain GBLs.

242.1403-2 Contractor-prepaid commercial bills of lading.

(a)(S-70) The term commercial bills of lading (CBL) includes the use of any commercial form or procedure.

(S-71) Appendix V of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commercial forms and procedures within CONUS.

(S-70) *Contract clause.* The contracting officer shall insert the clause at 252.242-7000, Submission of Commercial Freight Bill to the General Services Administration for Audit, when transportation costs are to be reimbursed to the contractor under a cost reimbursement type contract.

[51 FR 46286, Dec. 23, 1986, as amended at 53 FR 38247, Sept. 29, 1988]

242.1404-2 Contract clauses.

(a) The clause at FAR 52.242-10 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213-1.

(b) The clause at FAR 52.242-11 will not be included in those f.o.b. origin supply or service contracts containing the Fast Payment Procedure clause, FAR 52.213.1.

(S-70) When the clauses at FAR 52.242-10 or FAR 52.242-11 are used in DoD contracts, the contract or ordering instrument shall instruct contractors desiring to obtain GBLs under paragraph (b) of those clauses to submit DD Form 1659, Application for United States Government Bills of Lading/Domestic Route Order/Export Traffic Release.

242.1405 Discrepancies incident to shipment of supplies.

(S-70) Improper markings or consignment deficiencies may result in misdirected shipments or additional handling or stowing of shipments, or affect identification of contents which necessitates opening of containers.

(S-71) The administrative procedures required in Chapter 221 of the Military Traffic Management Regulation govern the actions to be taken with respect to discrepancies caused by carriers.

242.1470 Routing, tracing, and expediting shipments.

(a) Routing of military freight consists of determining a mode of transportation and the carrier which will effect safe and timely delivery of supplies at the lowest overall costs.

(b) Tracing is the procedures used for locating unduly delayed shipments.

(c) Expediting is the procedure used when a shipment is urgently needed at destination or when congestion is likely to occur on the lines of the carriers over which the shipment is to move.

(d) Methods for tracing or expediting shipments are outlined in Chapter 220, Military Traffic Management Regulation.

242.1471 Demurrage and detention charges.

(a) Demurrage is a fixed charge made by rail carriers on cars held by, or for, a consignor or consignee for loading, unloading, or for any other purpose. A contractor who detains cars for these reasons is required to pay the carrier's published tariff charges for demurrage. Generally, carrier demurrage rules allow a definite period called "free time" for loading or unloading cars or for any other purpose, and impose a definite per day per car charge for cars held beyond this period. The free time allowed is usually 48 hours for loading or unloading cars and 24 hours when cars are held for reconsignment, diversion, reshipment, or held in transit on orders of the shipper or consignee. Normally, the free time starts from the first 7 a.m. (excluding Saturdays, Sundays, and holidays) after placement of the car.

(b) Detention is the term used when motor carrier equipment is held by, or on behalf of, a shipper or consignee beyond a reasonable period allowed for loading, unloading, forwarding directions, or for any other purpose. Motor carrier detention rules and charges are not uniform and are published in individual carrier or agency tariffs. Detention charges are usually based on an hourly rate.

(c) Procedures involving payment or collection of demurrage or detention charges are contained in paragraph 219010 of the Military Traffic Management Regulation.

242.1472 DD Form 1659 (1 Apr 70), application for U.S. Government Bill(s) of Lading/Domestic Route Order/Export Traffic Release.

DD Form 1659 shall be prepared by the contractor for submission of advance shipping data to the cognizant contract administration office. In response, the transportation office shall furnish the required U.S. Government Bill of Lading, Domestic Route Order or Export Traffic Release when necessary, required for use in connection with the Government contract.

Subpart 242.70—Monitoring Contractors' Costs

242.7000 Scope.

This subpart sets forth guidelines for monitoring the policies, procedures, and practices used by contractors to control direct and indirect costs related to Government business. These procedures are intended to eliminate duplication in monitoring contractors' costs.

242.7001 Purpose.

To ensure the most efficient and economical performance of DoD contracts, it is essential that contract costs be managed effectively. Contractors are responsible for managing and controlling their direct and indirect costs. However, DoD components need to systematically monitor the management of such costs to assure that contractors are fulfilling their responsibilities.

242.7002 Application.

A formal program of Government monitoring of contractor policies, procedures, and practices to control costs should be conducted at:

(a) All major contractor locations where—

(1) Sales to the Government are expected to exceed $50 million during the contractor's next fiscal year on other than firm-fixed-price and fixed-price-with-escalation contracts;

(2) The Government's share of indirect costs for such sales is at least 50% of the total of such indirect costs; and

(3) A contract administration office has been established at the location.

(b) Other critical locations with significant Government business where specifically directed by the HCA.

Decisions to implement or terminate cost monitoring should be based upon sound estimates of Government business for the coming year and not upon minor interim volume fluctuations. This does not preclude action to start or stop the program during a given year where there is a significant change in volume and the anticipated new level of business is expected to remain stable for a reasonable period of time.

242.7003 Designation of a Cost Monitoring Coordinator.

A member of the contract administration office (CAO) cognizant of a contractor location shall be designated as the Cost Monitoring Coordinator (CMC) after the location has been identified as qualified under 242.7002 for application of this program. Depending upon the circumstances, the designee may be the ACO or any other staff member whose normal function relates to evaluation of contractor performance.

242.7004 Responsibilities of the Cost Monitoring Coordinator.

(a) In performing his assigned contract administration duties, the Plant Rep/ACO acts as a high-level manager calling upon the various specialists established within DoD to review and report on those areas that fall within their respective areas of expertise. It is not intended that the Plant Rep/ACO duplicate the functional capabilities or work of such specialists. Likewise, the CMC in the contract administration organization will fully utilize the work of these specialists in monitoring contractor costs through coordination with their various organizations.

(b) The CMC shall be responsible for:

(1) Preparing and maintaining an annual consolidated written plan and schedule for reviewing contractor operations from coordinated long-range plans established by each team member including the DCAA auditor. This composite plan and schedule will assure cost monitoring responsibilities are being fully implemented and that the technical and professional expertise of various organizational units of the CAO are used without duplication of effort or skills (see also 242.7006);

(2) Coordinating the performance of the cost monitoring effort of the organizational units of the CAO;

(3) Coordinating the cost monitoring efforts of the CAO with those of the DCAA auditor;

(4) Advising the head of the CAO of situations where the contractor should correct conditions, policies, or practices which are not considered the most economical and efficient for the performance of Government contracts, and recommending corrective action, including issuance of formal written notices to the contractor advising of specific costs which may not be allowed if incurred;

(5) Coordinating CAO actions to assure that the procuring contracting officer, project manager, the head of the procuring activity, DCAA, and other responsible officials are informed of relevant matters significantly affecting the most economical and effective performance of Government contracts;

(6) Coordinating actions to assist the CAO, DCAA, and other Government personnel in obtaining access to pertinent contractor policies, procedures, and related data, and obtaining the assistance of the head of the CAO when such access is being denied or impaired;

(7) Maintaining an inventory of CAO, DCAA, and other Government reports on significant issues relating to monitoring costs;

(8) Continuously monitoring the status of recommendations made to the contractor concerning cost per-

formance stemming from all Government reports. While contractors are responsible for managing their direct and indirect costs, the CMC monitors the contractors' effort through this task. In the event agreement is not reached on a recommendation and the cost or principle involved is sufficiently important, the CMC should prepare for the ACO's consideration, a *Notice of intent to disallow or not recognize costs;*

(9) Maintaining current organizational charts of the operations identifiable to the contractor's functional centers of his cost control systems.

(c) The plan required by (b)(1) above must be tailored to the contractor, taking into account the extent of competition in awarded contracts, the contractor's operating methods, the nature of work being done, procurement cycle stage, business and industry practices, types of contracts involved, degree of technical and financial risk, ratio of Government/commercial work, and extent that performance efficiencies have been previously demonstrated. The plan should stress the importance of anticipating potential problems and provide a means of calling them to the attention of the contractor at an early stage so that preventive action can be taken. Reviews required by this supplement and the contracting officer must be included in the plan.

[51 FR 46286, Dec. 23, 1986, as amended at 54 FR 53619, Dec. 29, 1989]

242.7005 DCAA auditor responsibility.

DCAA audit offices are responsible for performing all necessary contract audit for DoD and providing accounting financial advisory service regarding contracts and subcontracts to all DoD components responsible for procurement and contract administration. The auditor is responsible for submitting information and advice based on his analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs, as well as for reviewing the financial and accounting aspects of the contractor's cost control systems. The auditor is also responsible for performing that part of reviews and such analysis which requires access to the contractor's financial and accounting records supporting proposed costs or pricing data. This does not preclude the Program Manager, PCO, Plant Rep/ACO, or their technical representatives from requesting any data from, or reviewing records of, the contractor (such as CSCS/C data, lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities. The CAO will utilize the auditor's services whenever such expertise is needed, particularly regarding the contractor's financial management reports, books, and records.

242.7006 Procedure.

(a) *Selecting operations for review.* It is not possible to review all elements of a contractor's entire operation each year. Therefore, the CMC, together with the auditor, is to select for review those operations that have the greatest potential for charging Government contracts with significant amounts of unacceptable costs. To select these cost-risk areas on a sound and orderly basis, an overview must first be obtained of the contractor's entire operation. Before the beginning of each Government fiscal year, the CMC should arrange for a joint meeting between CAO, DCAA, and other directly interested Government representatives to coordinate selection of the areas to be reviewed during the coming year. The following data will be used in the selection process:

(1) The contractor's forecasts for the coming year supporting direct and indirect costs by functional centers of his cost control aystem and the results of the latest survey performed of such systems (DCAA responsibility);

(2) Detailed organizational charts for the contractor's entire operation (CAO responsibility);

(3) An outline of the contractor's accounting system to understand the flow of costs by function (DCAA responsibility);

(4) The determination of Government participation in the dollars attributable to the operations and cost accounts under consideration (DCAA responsibility);

(5) A complete list of recent reviews and audits performed by CAO, the DCAA, and other Government representatives that would effect the selection of areas to be reviewed in the current year. This listing should show outstanding weaknesses and deficiencies in the contractor's operations (CAO responsibility);

(6) Evidence of under and overstaffing (CAO-DCAA responsibility);

(7) Significant departures from established contractor productivity standards (CAO responsibility);

(8) Major financial variances from forecasts in prior years (DCAA responsibility);

(9) Evidences of idle or underused capacity (CAO-DCAA responsibility).

(b) *Annual audit plans.* (1) The primary purpose of the joint meeting described above is to develop a mutually acceptable annual plan for reviewing the contractor's operation. The plan should provide coverage for each significant operational area of the contractor over a period of two to three years and should be modified to reflect any changed conditions during subsequent meetings. The schedule and resource limitations of participating organizations will be considered in preparing the annual plan. The plan will identify the organizations having the primary responsibility for performing the reviews:

(i) The CAO will review the technical aspects of contractor operations requiring minimal or no access to contractors' financial and accounting records and will sign reports on these reviews;

(ii) DCAA will review the financial and accounting aspects of contractor operations requiring minimal or no technical considerations and will sign reports on these reviews;

(iii) The CAO and DCAA will jointly perform reviews requiring significant CAO and DCAA expertise. Reports resulting from these reviews will be signed by the heads of the respective local organizations.

(2) Some operations reviews such as the purchasing (CAO) and estimating system reviews (DCAA) are assigned to the responsible reviewing organization. These assignments will continue to be recognized. All others will be performed according to the above criteria. The annual plan will be formally approved by heads of the local CAO and the DCAA resident offices.

(3) Audit organizations, program offices, contracting activities, and any other organizations within DoD with responsibility for reviewing contractor operations for the purpose of monitoring contractor policies, procedures, and practices to control costs, shall submit to the cognizant CMC, an annual schedule of planned and tentative visits, oversight reviews, and audits to be performed at contractor's facilities meeting the criteria in 242.7002. The CMC shall incorporate these reviews in the annual audit plan. Any revisions to scheduled visits or audit plans shall be submitted to the CMC within 30 days of issuance.

(c) *Joint review.* (1) *Objective.* The objectives of joint CAO-DCAA reviews of contractor operations are:

(i) To optimize the utilization of DCAA-CAO personnel in performing selected operations reviews; and

(ii) To generate joint reports of the reviews that contain findings, conclusions, and recommendations mutually agreed upon by the DCAA auditor and the CAO to improve the effectiveness and economy of contractor operations.

(2) *Exit conference with contractor.* During the course of the review, there may be several informal briefings with contractor management personnel to exchange information. Every opportunity should be afforded each party, to either update the information provided or to conduct additional reviews to preclude misconceptions that could develop as a result of obtaining incomplete or inaccurate data. An exit conference with contractor management personnel provides the opportunity to explain CAO/DCAA findings, conclusions and recommendations. On joint reviews, the ACO or his representative shall arrange the exit conference with the contractor. Both CAO and DCAA will be represented at the exit conference.

(d) *Reports.* All reports prepared separately or jointly by DCAA or CAS personnel will be forwarded through the ACO to the contractor. While these review reports are advisory to the ACO, the ACO has responsibility to assure that (i) appropriate recognition is given to the results of such reviews in any contract negotiations and (ii) the contractor implements appropriate corrective actions. In event of any dispute with the contractor, the ACO has the ultimate responsibility and authority to effect final settlement.

[51 FR 46286, Dec. 23, 1986, as amended at 54 FR 53619, Dec. 29, 1989]

Subpart 242.71—Voluntary Refunds

242.7100 General.

A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. In most cases, voluntary refunds are requested after it has been determined that no contractual remedy is readily available to obtain the amount sought from the contractor. Acceptance of a voluntary refund will not prejudice remedies otherwise available to the Government. The voluntary refund should generally be used as a setoff against a future debt owed to the Government by the contractor; provided, the contracting officer determines that the voluntary refund relates directly to that debt, and provided the setoff is not otherwise prohibited by law or regulation (see e.g., 10 U.S.C. 2306a). In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer should ask legal counsel to review the contract or contracts and all data relevant thereto to ensure that there are no readily available contractual remedies and to advise whether the Government's right would be jeopardized or impaired by the contracting officer's proposed action.

[53 FR 38243, Sept. 29, 1988]

242.7101 Solicited refunds.

Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract, or was inadequately compensated for the use of Government-owned property or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. The decision to solicit a voluntary refund shall be made by Heads of Contracting Activities or at such other level by Departmental procedures.

[53 FR 38243, Sept. 29, 1988]

242.7102 Disposition of voluntary refunds.

(a) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(b) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the office designated for contract administration and shall be forwarded immediately to the comptroller of the appropriate Department or other Departmental officer responsible for the control of funds. When forwarded, the check shall be accompanied by a letter identifying it is a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

Subpart 242.72—Contractor Material Management and Accounting Systems

SOURCE: 54 FR 20593, May 12, 1989, unless otherwise noted.

242.7201 Scope of subpart.

This subpart prescribes policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS). It further prescribes the responsibilities of the contractor, the auditor, and the contracting officer regarding the assessment, demonstration, evaluation, and correction of deficiencies in a contractor's MMAS.

242.7202 Definitions.

Contractor, for purposes of this subpart, means a business unit as defined in FAR 31.001.

Material Management and Accounting System (MMAS), as used in this subpart, means the contractor's system(s) for planning, controlling, and accounting for the acquisition, use, and disposition of material. MMAS's may be manual or automated and they may be integrated with planning, engineering, estimating, purchasing, inventory, and/or accounting systems, etc., or they may be essentially stand-alone systems.

Valid Time-Phased Requirements means material which is:

(a) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, etc., and

(b) Is charged/billed to contracts or other cost objectives in a manner consistent with their need to fulfill the production plan.

242.7203 Policy.

It is the policy of the Department of Defense that all contractors have a MMAS that reasonably forecasts material requirements, assures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements, and maintains a consistent, equitable, and unbiased logic for costing of material transactions. To assist contractors to comply with this policy, standards for MMAS's are prescribed at 242.7206. The Government has no preference among the various automated or manual systems, or among various methods of material transfer/allocation, as long as the contractor's MMAS complies with the standards at 242.7206.

242.7204 Applicability.

(a) All contractors who receive prime contracts, other than contracts awarded under the set-aside procedures of FAR part 19, greater than the small purchase threshold set forth in FAR 13.000 and which are either (1) cost-reimbursement contracts, or (2) fixed-price contracts with progress or other financing payments, are expected to have a MMAS which conforms to the standards at 242.7206.

(b) The specific requirements of sections 242.7207 and 242.7208 apply to any large business contractor which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $50 million or more.

(c) For a large business contractor not meeting the criteria in paragraph (b) of this section but which in its preceding fiscal year received DoD prime contracts or subcontracts totaling $10 million or more, the PCO may require compliance with paragraphs (d) and (e) of the clause at 252.242-7001 with the concurrence, or at the request, of the ACO when such compliance is in the best interest of the Government (e.g., significant material management and accounting system deficiencies are believed to exist).

(d) The demonstration and evaluation requirements of sections 242.7207 and 242.7208 do not apply to small businesses, educational institutions, or nonprofit organizations.

[54 FR 20593, May 12, 1989, as amended at 54 FR 30747, July 24, 1989]

242.7205 Responsibilities.

(a) Contracting officers should note that the standards at 242.7206 and the enforcement requirements at 242.7208 are broadly worded and require the exercise of sound judgment to achieve effective implementation. Furthermore, this subpart requires careful coordination, communication, and understanding among the DCCA auditor, the contractor, and the ACO staff.

(b) Contractors shall assess their MMAS's and take reasonable action to comply with the standards at 242.7206.

(c) Contractors meeting the requirements in 242.7204 (b) or (c) shall, in accordance with 242.7207, disclose their MMAS to the cognizant ACO and shall, upon the request of the ACO, demonstrate the degree to which their MMAS complies with the standards at 242.7206.

(d) The ACO will neither approve nor disapprove a contractor's MMAS but only determine whether it adequately conforms to the standards set forth in 242.7206. However, the approval requirements of FAR 32.503-15(d) and 52.245-5(d) are met when the ACO has determined that the MMAS conforms to the standard at 242.7206(b)(7). ACO blanket approval of cost transfers between contracts should be contingent upon the contractor retaining records of the transfer activity that took place in the prior month and reporting, at least monthly, a summary of the transfer activity that took place in the prior month. The summary report should include as a minimum, the total number of transfers and their dollar value.

(e) For a contractor meeting the requirements in 242.7204 (b) or (c) above, the cognizant ACO shall determine the adequacy of the contractor's MMAS and pursue appropriate corrections of deficiencies.

(f) On behalf of the ACO, the cognizant auditor will advise and assist the ACO in evaluating both the contractor's MMAS and the contractor's correction of any deficiencies thereto. Auditors shall assess the significance of contractor deficiencies and provide the ACO an estimate of the adverse material impact to the Government resulting from such deficiencies.

242.7206 Material management and accounting system standards.

(a) MMAS's must have adequate internal accounting and administrative controls to assure system and data integrity.

(b) MMAS's must comply with the following:

(1) Have an adequate system description including policies, procedures, and operating instructions complaint with the FAR and DFARS.

(2) Assure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions. A 98-percent bill of material accuracy and a 95-percent master production schedule accuracy are desirable as a goal in order to assure that requirements are both valid and appropriately time-phased. If systems have accuracy levels below those above, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy levels, and/or (ii) the cost to meet the accuracy goals is excessive in relation to the impact on the Government.

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual overrides. Systems should identify operational exceptions such as excess/residual inventory as soon as known.

(4) Provide audit trails and maintain records necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired. Both manual records and those in machine readable form will be maintained for the prescribed record retention periods.

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95-percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the contractor must demonstrate that (i) there is no material harm to the Government due to lower accuracy level, and/or (ii) the cost to meet the accuracy goal is excessive in relation to the impact on the Government.

(6) Provide detailed description(s) of circumstances which will result in manual or system generated transfers of parts.

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions. The contractor will maintain and disclose a written policy describing the transfer methodologies. The costing methodology may be standard or actual cost, or any of the inventory costing methods in FAR 30.411-50(b). Consistency must be maintained across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(i) The system should transfer parts and associated costs within the same billing period.

(ii) In the few circumstances where it may not be appropriate to transfer parts and associated costs within the same billing period, use of a "loan/payback" technique must be approved by the ACO. When the technique is used, there must be controls to ensure that parts are paid back expeditiously; procedures and controls are in place to correct any overbilling that might occur; at a minimum, the borrowing contract and the date the part was borrowed are identified monthly; and the cost of the replacement part is charged to the borrowing contract.

(8) Where allocations from common inventory accounts are used, have controls in addition to the requirements of standards in paragraphs (b) (2) and (7) above to ensure that:

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements which are not under contract are not allocated to contracts;

(iii) Algorithms are maintained based on valid and current data.

(9) Notwithstanding FAR 45.505-3(f)(2)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the above standards.

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

242.7207 System disclosure, demonstration, and maintenance requirements.

(a) A MMAS disclosure is adequate when the contractor has provided the cognizant ACO documentation which accurately describes those policies, procedures, and practices that the contractor currently uses in its MMAS in sufficient detail for the Government to reasonably make an informed judgment regarding the adequacy of the contractor's MMAS.

(b) A MMAS demonstration is adequate when the contractor has provided the cognizant ACO sufficient evidence to demonstrate the degree of conformance of its MMAS to the standards at 242.7206, including an estimate of the cost impact to the Government of any significant deficiencies and a comprehensive plan for correcting any significant deficiencies.

(c) Significant changes to the MMAS must be disclosed to the cognizant ACO within 30 days of their implementation.

(d) If the contractor notifies the Government representative to whom the information is submitted, i.e., the ACO or the auditor, that disclosed information relative to its MMAS contains commercial or financial information which it regards as privileged and confidential, such information shall be protected and shall not be released outside the Government without the permission of the contractor. The contractor should ensure an appropriate legend is on the face of the disclosed document at the time of submission.

242.7208 Procedures.

(a) *System Evaluation.* Cognizant audit and contract administration activities will jointly establish and manage programs for evaluating the MMAS's of contractors meeting the requirements of 242.7204 (b) or (c). Evaluations will be based on the disclosure/demonstrations provided by the contractors. Evaluations and reports shall be accomplished as a contract audit and contract administration office team effort. The ACO shall appoint a team leader and ensure representation of appropriate functional specialties. Evaluations shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. A system evaluation shall be conducted at least every three years, except where the ACO, in consultation with the auditor, determines that past experience and a current vulnerability assessment of the contractor discloses low risk. If the ACO determines that the Government is subject to high risk, MMAS evaluations should be done more frequently. To the extent possible, the evaluation team leader should inform the contractor and the ACO of significant findings during the conduct of the evaluation. The team leader should apprise the contractor during an exit conference of any significant findings.

(b) *Disposition of Evaluation Team Findings*—(1) *Reporting of Evaluation Team Findings.* The report shall address the evaluation team findings and recommendations. If there are significant MMAS deficiencies, the report shall provide an estimate of the adverse material impact to the Government resulting from those deficiencies and a recommendation as to the acceptability of the contractor's corrective action plan.

(2) *Field Pricing Reports.* When the report of an evaluation indicates that there is a significant MMAS deficiency, all field pricing reports for that contractor will contain a recommendation relating to proposed cost and pricing data adjustments necessary to protect the interest of the Government, until the deficiency(s) is corrected.

(3) *Initial Notification of Contractor.* Upon receipt of the system evaluation report, the ACO shall provide a copy to the contractor and allow 30 days, or a reasonable extension thereto, for submission of its written response. If no significant deficiencies are identified, the ACO will notify the contractor in a timely manner.

(i) *Contractor Agreement.* If the contractor agrees with the report findings and recommendations, the contractor should proceed with the execution of the corrective action plan.

(ii) *Contractor Disagreement.* If the contractor disagrees with the report findings and recommendations, the contractor's response should contain the rationale for each area of disagreement.

(4) *Evaluation of Contractor's Response.* The ACO, in consultation with the auditor, will evaluate the contractor's written response and determine whether—

(i) The MMAS contains deficiencies which need correction;

(ii) Any deficiencies are significant enough to result in the reduction or suspension of progress payments or of payments under public vouchers; and

(iii) Proposed corrective actions are adequate to correct the deficiencies.

(5) *Contracting Officer Responsibility.* (i) When the ACO determines that there is a significant MMAS deficiency, the ACO shall suspend, in accordance with FAR 32.503-6, an appropriate percentage of affected costs on progress payment claims and public vouchers proportionate to the adverse material impact to the Government until a corrective action plan is submitted and accepted. The percentage of the suspension will be impacted by the quality of the contractor's self-assessment, demonstration, and corrective action plan. After acceptance of the corrective action plan, but prior to complete implementation, the ACO will reduce the suspension as appropriate to reflect the contractor's progress. In no case, however, will total amounts of affected costs be approved for progress payments or public vouchers until the contractor's system is determined to be acceptable for Government contract costing purposes, or the amount of the impact is determined to be immaterial.

(ii) When the report of an evaluation indicates that there is a significant MMAS deficiency, the ACO should ensure that the effect of the deficiency(s) is considered in the review of the contractor's estimating system pursuant to DFARS 215.811.

(6) *Notification of ACO Determination.* The ACO will notify the contractor and the auditor of the determination and any decision to reduce or suspend progress payments or payments under public vouchers. The notice shall identify the deficiencies requiring correction and will indicate acceptance or rejection of the contractor's corrective action plan.

(7) *Monitoring Contractor's Corrective Action.* The auditor and ACO will monitor the contractor's progress toward correction of deficiencies. In the event the contractor fails to make adequate progress toward corrective action, the ACO shall take further appropriate action to ensure that the contractor corrects the deficiency. Actions which should be considered by the ACO include, but are not limited to, bringing the issue to the attention of higher level management, further reduction or suspension of progress payments in accordance with FAR 32.503-6, disapproval of the contractor's cost accounting system and/or cost estimating system, and/or recommendations concerning award of future contracts.

242.7209 Contract clause.

The contracting officer shall insert the clause at 252.242-7001 in all solicitations and resulting contracts which are greater than the small purchase threshold set forth in FAR 13.101 and are either (a) cost-reimbursement contracts or (b) are fixed-price contracts with progress or other financing payments. However, the clause shall not be included in that portion of solicitations and contracts which are set aside for exclusive participation by small business and small disadvantaged business concerns.

Subpart 242.73—Contract Insurance/Pension Review (CIPR)

SOURCE: 53 FR 46458, Nov. 17 1988, unless otherwise noted.

242.7300 Objective.

(a) This subpart sets forth the requirements for conducting a Contractor Insurance/Pension Review (CIPR). A CIPR is an in-depth evaluation of a contractor's insurance program, pension plan(s), other deferred compensation plans, and related policies, procedures, practices, and costs. The Defense Logistics Agency (DLA) is the designated Department of Defense Executive Agency for CIPRs. The Administrative Contracting Officer (ACO) is responsible for determining the reasonableness of insurance/pension costs to be considered on government contracts. Insurance/Pension Specialists (I/PSs) assigned to certain DLA Defense Contract Administration Services Regions (DCASRs) are responsible for assisting contracting officers in making these determinations by conducting CIPRs.

(b) The CIPR should be the only formal review of a contractor's insurance/pension program, except for periodic tests of the system performed by contract administration and DCAA, or any special reviews which the ACO may initiate. If any organization believes that additional reviews of the contractor's insurance/pension program should be performed, that request should be conveyed to the ACO. The ACO should perform the review as part of an ACO-initiated special review, or, if possible, as part of the CIPR if one is scheduled to be conducted in the near future.

242.7301 Requirements.

(a) Initial and biennial CIPRs will be performed at contractor locations that have actual or anticipated annual sales to the Government of $10 million or more on negotiated prime contracts, contract modifications, and subcontracts under Government prime contracts. However, it may be appropriate to conduct CIPRs on a more or less frequent basis under certain circumstances, e.g., prior to a major contract award, in conjunction with in-depth overhead reviews or subsequent to mergers or divestitures.

(b) Special reviews may be performed on selected insurance and pension elements at those contractors that do not meet the criteria for an initial review, but where significant problems have been identified. Also, these reviews may be performed to follow-up contractor implementation of recommendations from prior reviews and to verify Government recovery of credits.

(c) During the period of time between team reviews, the Government may perform any additional review necessary to establish the validity of Government costs.

242.7302 Responsibilities.

(a) The ACO is responsible for:

(1) Determining the need for a CIPR in accordance with sections 242.7300 and 242.7301.

(2) Requesting and scheduling the reviews with the appropriate DLA activity.

(3) Notifying the contractor of the proposed date, purpose of the CIPR, and obtaining from the contractor information needed by the I/PS.

(4) Advising the contractor of the results of the CIPR after receipt of the approved CIPR report.

(5) Providing other interested contracting officers copies of letters to the contractor or reports detailing the results of the CIPR.

(6) Advising the contractor that any significant changes in insurance/pension plans must be submitted to the

ACO for review and acceptance prior to making the changes.

(7) Assuring adequate follow-up on all CIPR recommendations.

(b) DLA is responsible for:

(1) Preparing and maintaining the schedule of CIPRs to be performed during the next 12 months and providing the Military Departments and DCAA a copy of the schedule.

(2) Heading the team that conducts the review.

(3) Reviewing the documentation and ensuring that documentation (e.g., CIPR work papers and files) is complete.

(4) Reviewing and approving all CIPR reports.

(5) Preparing and distributing the final CIPR reports. In the event there is a discrepancy between the audit report and the draft CIPR report, every effort will be made to resolve such discrepancy before a final CIPR report is issued to the contracting officer.

(6) Providing the final audit report as an attachment to the CIPR report.

(7) Preparing the draft letter for the contracting officer's use in notifying the contractor of CIPR results.

(8) Advising the ACO and other DCASRs or Military Department representatives concerning any insurance/pension matters when requested.

(c) The Defense Contract Audit Agency (DCAA) is responsible for:

(1) Participating as a member of the CIPR team.

(2) Submitting information and advice to the team based on DCAA's analysis of the contractor's books, accounting records and procedures or other related data.

(3) Issuing an audit report to the CIPR Team Captain for incorporation into the final CIPR report.

PART 243—CONTRACT MODIFICATIONS

Subpart 243.1—General

Sec.
243.102 Policy.
243.104 Notification of contract changes.
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243.204 Administration.
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Subpart 243.70—Adjustments to Prices Under Shipbuilding Contracts

243.7001 Adjustments to prices under shipbuilding contracts.
243.7002 Submission requirements.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46295, Dec. 23, 1986, unless otherwise noted.

Subpart 243.1—General

243.102 Policy.

(b) See 217.7503 for specific limitations on DoD undefinitized contract actions.

[52 FR 12389, Apr. 16, 1987]

243.104 Notification of contract changes.

(b)(1) Only the contracting officer is authorized to take the actions prescribed in paragraphs (c) and (d) of the clause at FAR 52.243-7, except when the contracting officer expressly delegates in writing any or all of such actions to the Administrative Contracting Officer (ACO).

(2) In exceptional cases, the contracting officer may designate a "specifically authorized representative" to issue directions and interpretations as provided in the clause contained in FAR 52.243-7 when the contracting officer anticipates that continuity of the contractor's performance for a particular phase or task under a contract is so important that no delay or diminution of performance is acceptable. If such a designation is made, the notice of designation shall: (i) Be in writing and furnished promptly to the contractor, the ACO, and the "specifically authorized representative," and (ii)

clearly prescribe the scope and duration of authority of the "specifically authorized representative," *Provided*, however, that such designated authority in no event shall exceed the authority of the contracting officer. All directions, communications, interpretations, orders and similar conduct of a "specifically authorized representative" shall be reduced to writing as promptly as possible after their occurrence and copies thereof shall be furnished to the contractor and to the contracting officer and ACO. No notice of designation, however, shall be issued retroactively to confirm directions earlier communicated by a representative of the Government. The contracting officer shall promptly countermand any directions of "specifically authorized representative" which exceed the representative's designated authority. A sample of such a designation is:

I, John Doe, Contracting Officer, pursuant to (a) of the Notification of Changes clause in Contract N000000-83-C-0001 hereby designate Ralph Roe, quality assurance representative resident at the contractor's facility as my representative empowered to communicate directions, interpretations, determinations and orders concerning qualification test specification No. ABCD dated 6 August 1979 during the forthcoming qualification testing of the XYZ weapon system between 29 November and 4 December 1983.

[51 FR 46295, Dec. 23, 1986, as amended at 53 FR 38196, Sept. 29, 1988]

243.105 Availability of funds.

(S-70) (1) It is the policy of the Department of Defense that unexpended dollar balances determined to be excess to known contractual requirements shall be released promptly. Contracting officers shall monitor contract fund status and take action to reduce the dollar balance of contracts when determined to be in excess of the amounts necessary for payment of outstanding contract requirements.

(2) To accomplish such determination, consultation with contractors and coordination between contracting offices and CAOs may be required to properly establish funding levels. A determination may be based upon, but is not limited to: (i) Contractually required funding reports; (ii) Fund status reviews; (iii) Advice from the contractor; (iv) Advice from the buying office, CAO, or DCAA; (v) Examination of vouchers or invoices; and (vi) A review of contract progress. Upon a determination of excess funds, contracting officers shall take appropriate action to assure such funds are removed from contracts as expeditiously as possible. For release of funds excess to a termination claim, see FAR 49.105-2 and 249.604.

243.170 Identification of FMS contract modifications.

If the modification adds FMS requirements, identify the modification by clearly stamping or otherwise indicating the "FMS Requirement" on the face of the modification and specify within the modification each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA, for such added FMS items.

Subpart 243.2—Change Orders

243.201 General.

(S-70) Fair and economical processing of change orders does not occur automatically merely by issuance of an authorized change order. Procedures are necessary to:

(1) Establish the authority of the Government to request a contractor to originate a change or to evaluate a Government proposed change;

(2) Promote the policy of forward pricing of changes when feasible;

(3) Require the contractor to submit and to certify cost or pricing data in support of the contractor's equitable adjustment;

(4) Provide that contractor-originated changes of less than a specified magnitude may be made without price adjustment;

(5) Provide for recording of and accounting for segregable direct costs of changed work in support of equitable adjustment claims; and

(6) Equitably adjust the contract in a single, final and complete supplemental agreement.

(S-71) Additional guidance on undefinitized contract actions can be found in Subpart 217.75.

[51 FR 46295, Dec. 23, 1986, as amended at 52 FR 12389, Apr. 16, 1987]

243.202 Authority to issue change orders.

(S-70) *Originating engineering change proposals.*

(a) Engineering changes may be originated by either party to the contract. The Government needs to obtain detailed information supporting and documenting the proposed change; to evaluate the technical, cost and schedule effects of implementing the change; and to price the change in advance when possible. The clause at 252.243-7000 may be used to require a contractor to submit engineering change impact evaluation information, including the maximum equitable adjustment resulting from the change.

(b) The clause at 252.243-7000 includes a sample of an optional paragraph (c) supplementing the basic clause to discourage a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing such changes.

243.204 Administration.

(S-70) *Correction or revision.* Upon receiving a copy of the change order from the contracting officer, the ACO shall review it to assure that its provisions are compatible with the status of performance. For example, if the contractor has progressed beyond the effective point specified in the change order, the ACO shall determine the earliest practical point at which the change order could be made effective and advise the contracting officer accordingly. Correction, revision or supersession of a change order shall be made by issuing another change order. The definitizing supplemental agreement shall cite both change orders.

(S-71) *Responsibility for negotiation of equitable adjustments.* Except for those change orders assigned to the ACO, the contracting officer shall be responsible for negotiating all equitable adjustments resulting from change orders, including the execution of supplemental agreements in Standard Form 30, Amendment of Solicitation/Modification of Contract. The ACO shall forward to the contracting officer the contractor's proposal, together with an analysis thereof. Except at the specific request of the contracting officer, the analysis shall not include the negotiation of any element of the contractor's proposal, although obvious mistakes may be called to the contractor's attention. Differences between the contractor's proposal and the results of the analysis made by the contract administration office shall be called to the attention of the contracting officer.

(S-72) [Reserved]

(S-73) *Modifications to letter contracts.*

(1) Modifications to letter contracts shall be accomplished under the same policies and procedures as those applicable to definitive contracts.

(2) Bilateral modifications (supplemental agreements) issued prior to definitizing a letter contract may be processed in the same manner as the letter contract, i.e., the contracting officer may sign prior to the contractor.

[51 FR 46295, Dec. 23, 1986, as amended at 53 FR 38196, Sept. 29, 1988]

243.205 Contract clauses.

(S-70) The contracting officer may insert the clause at 252.243-7000, Engineering Change Proposals, under the conditions at 243.202-70(a).

(S-71) The contracting officer shall insert the clause at 252.243-7001, Pricing of Adjustments, in solicitations and contracts when a fixed-price type contract is contemplated.

Subpart 243.3—Forms

243.301 Use of forms.

(a)(2)(ii) The SF 30 shall be used in connection with termination actions as follows:

(A) *Notice of termination for convenience of the Government.* SF 30 shall be used as the initial or confirming notice, and shall include the information outlined in FAR 49.601-2, appropriately modified as required. If the termination is partial, the line items and quantities affected by the termination shall be identified to the extent practicable. If the termination is complete, line item identification may be omitted, since the contract is considered to be physically completed upon issuance of a notice of complete termination. (See DAR Supplement 2 (S2-301.1).) The same modification number and effective date shall be assigned to the initial and confirming modification.

(B) *Notice of termination for default.* SF 30 shall include all information outlined in FAR 49.402-3(g), including the statement that the modification constitutes a decision of the contracting officer from which the contractor has the right of appeal pursuant to the Disputes clause, if the contracting officer has determined that failure to perform was not excusable. If the notice does not include the decision of the contracting officer, the decision, when made, shall be issued in letter form pursuant to FAR 49.402-3(k).

(C) *Amendment to termination notice.* Each amendment to a termination notice, including rescission of the termination, reinstatement of items or quantities previously terminated, or termination of additional items or quantities, shall be issued on SF 30.

(D) *Conversion of default termination to convenience.* If a termination for default is subsequently converted to a termination for convenience of the Government, either by a decision of the contracting officer or by a decision of ASBCA on an appeal filed by the contractor, the converted designation shall be reflected on SF 30. The effective date of the termination for default shall be indicated in the modification as the effective date of the convenience termination.

(E) *Determination of contracting officer.* SF 30 shall be used to reflect a determination of the amount due in settlement of a contract terminated for convenience:

(*a*) In cases where the contractor has lost the right of appeal for failure to submit a timely settlement proposal in accordance with the Termination clause; and

(*b*) To confirm the determination, if the contractor does not appeal the decision of the TCO.

SF 30, prepared pursuant to (*b*) above, shall indicate the same effective date as the letter determination previously issued. Item 14 of the modification may be limited to a reference to the letter determination and a statement of the net amount determined to be due in settlement of the termination. To assure sequential numbering of modifications, a Supplementary Procurement Instrument Identification Number shall not be assigned to the letter determination.

(a)(S-70) Three copies of Standard Form 30 should be sent to the contractor with instructions to return the original and one copy.

Subpart 243.70—Adjustments to Prices Under Shipbuilding Contracts

243.7001 Adjustments to prices under shipbuilding contracts.

10 U.S.C. 2405 provides that no adjustment in any price under a shipbuilding contract entered into after December 7, 1983 may be made for an amount set forth in a claim, request for equitable adjustment, or demand for payment under a contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request or demand.

243.7002 Submission requirements.

A claim, request, or demand under this subpart shall be considered to have been submitted only when the contractor has provided the certification required by section 6(c)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)(1)) and the supporting data for the claim, request, or demand.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 244.3—Contractors' Purchasing Systems Reviews

Sec.
244.301 Objective.
244.302 Requirements.
244.303 Extent of review.
244.305 Granting, withholding, or withdrawing approval.
244.307 Reports.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46297, Dec. 23, 1986, unless otherwise noted.

Subpart 244.3—Contractors' Purchasing Systems Reviews

244.301 Objective.

(a) This subpart sets forth the DoD requirements for conducting a contractor purchasing system review (CPSR) under the direction of a purchasing system analyst (PSA). When deemed necessary, Contractor Purchasing System Review Boards may be established in accordance with Departmental procedures. If no board is to be convened, the report shall be forwarded directly to the ACO by the CPSR team captain. If it is determined that a review board is necessary, the report of the CPSR team shall be reviewed and evaluated by the board, which shall make appropriate recommendations to the ACO.

(b) The ACO is responsible for reviewing the contractor's purchasing system. Members of other organizations such as audit organizations or a Program Manager's Office, should not conduct separate reviews of a contractor's purchasing system, but may participate in the review conducted under the authority of the ACO. If a problem appears to exist, these organizations may recommend to the ACO that an additional review be performed. If the ACO agrees, the additional review will be performed as part of an ACO initiated special review (see 244.302(b)(3)).

[51 FR 46297, Dec. 23, 1986, as amended at 54 FR 53620, Dec. 29, 1989]

244.302 Requirements.

(b)(1) *Initial review.* An initial review is a complete, intensive, first-time analysis of a contractor's purchasing system.

(2) *Subsequent review.* A subsequent review is an analysis of a contractor's purchasing system, performed to validate the adequacy of the system.

(3) *Special reviews.* A special review is an investigation of specific weaknesses identified in any contractor's purchasing system, using the same techniques followed in performing an initial or subsequent review. The ACO, or the PSA, with the concurrence of the ACO, may initiate special review of any contractor's purchasing system in connection with deficiencies revealed as a result of:

(i) The initial or subsequent review;

(ii) The review of subcontracts submitted under the notification and consent to subcontract requirements of contract clauses;

(iii) Major changes in the contractor's purchasing policies, procedures, or key personnel;

(iv) Changes in plant workload or type of work; or

(v) Information provided by Government personnel. In conducting special reviews, the same criteria used in initial or subsequent reviews shall be applied to the area being examined. The summary report format will be used as appropriate.

(4) *Followup review.* A followup review is an investigation performed when a contractor's purchasing system approval is withheld or withdrawn, to determine whether a contractor has implemented the recommendations of the ACO and corrected the deficiencies revealed by any purchasing system review. The techniques used in making an initial or subsequent review are employed in the followup review. If approval of a contractor's purchasing system is withheld or withdrawn, a followup review shall be made as soon as evidence is received from the contractor that the factors leading to the action have been corrected. Whether this followup review consists of a complete reexamination of the contractor's purchasing system or is confined to the areas found deficient shall be a matter of judgment and will depend on the time lapse between the notice to the contractor of withholding or withdrawal of approval and the followup review. The summary report format will be used as appropriate.

[51 FR 46297, Dec. 23, 1986, as amended at 55 FR 30159, July 24, 1990]

244.303 Extent of review.

Supplement 1 contains additional guidance for conducting CPSR's on Defense contractors. Nothing in Supplement 1 should be read as precluding contractors from utilizing competition limited to small disadvantaged business concerns or Historically Black Colleges and Universities or Minority Institutions.

[51 FR 46297, Dec. 23, 1986, as amended at 55 FR 19080, May 8, 1990]

244.305 Granting, withholding, or withdrawing approval.

An exit conference shall be held with the contractor at completion of the inplant review. At that time, the contractor should be given the review team's recommendations signed by the ACO. The contractor shall be requested to furnish its plan for accomplishing the necessary actions within 15 days.

244.307 Reports.

After receipt of the complete report (Parts I and II), the ACO, within 5 days, shall review and evaluate the report, prepare a letter to the contractor stating the status of the purchasing system, and provide copies of the report and the letter to those described in FAR 44.307 and such others as approved by the ACO. One copy of the summary report (Part I only) shall be sent to a contracting office when requested. A copy of the ACO's letter to the contractor, setting forth the status of the purchasing system, shall be attached to the summary report.

[51 FR 46297, Dec. 23, 1986, as amended at 55 FR 30159, July 24, 1990]

PART 245—GOVERNMENT PROPERTY

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245.405 Contracts with foreign Governments or international organizations.
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245.7102-6 General sales terms and conditions, and special conditions of sale.
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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46299, Dec. 23, 1986, unless otherwise noted.

Subpart 245.3—Providing Government Property to Contractors

245.301 Definitions.

Agency-peculiar property, as used in DoD, means military property and includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item.

Facilities Project means an undertaking by the Government to provide facilities to a contractor for the performance of a Government contract or subcontract or to modernize or replace facilities for the same purpose.

Industrial Plant Equipment (IPE) is that part of plant equipment with an acquisition cost of $5,000 or more; used for the purpose of cutting, abrading, grinding, shaping, forming, joining, testing, measuring, heating, treating, or otherwise altering the physical, electrical or chemical properties of materials, components or end items entailed in manufacturing, maintenance, supply, processing, assembly, or research and development operations; and IPE is further identified by noun name in the following Joint DoD Handbooks:

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[Note.—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402]

FSC	Title	Army	Navy	Air Force	DLA	Marine Corps
3424, 4430	Industrial Furnances & Ovens Volume 1 and 2	SB 708-4430-1	NAVSUP Pub 5502	AFM 78-8	DLAH 4215.4	MCO P4870.8B
6635	Physical Properties Testing Equipment	SB 708-6635-1	NAVSUP Pub 5504	AFM 78-10	DLAH 4215.6	MCO P4870.10C
6636	Environmental Chambers	SB 708-6636-1	NAVSUP Pub 5508	AFM 78-14	DLAH 4215.10	MCO P4870.14C
3422, 3426	Rolling Mills, Drawing Machines & Metal Finishing Equipment.	SB 708-3400-2	NAVSUP Pub 5510	AFM 78-15	DLAH 4215.12	MCO P4870.16C
3450, 3460	Portable Machine Tools & Metal-working Machinery Accessories.	SB 708-3400-3	NAVSUP Pub 5511	AFM 78-16	DLAH 4215.13	MCO P4870.17B
6650, 6670	Scales, Balances & Optical Instruments	SB 708-6600-2	NAVSUP Pub 5516	AFM 78-25	DLAH 4215.18	MCO P4870.22B
3680	Foundry Equipment	SB 708-3680-1	NAVSUP Pub 5517	AFM 78-23	DLAH 4215.19	MCO P4870.23A
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3620	Rubber and Plastics Working Machinery	SB 708-3620-1	NAVSUP Pub 5534	AFM 78-28	DLAH 4215.35	MCO P4870.40B
3611, 3693, 3695	Marking, Assembly, and Miscellaneous Industry Machinery	SB 708-3600-2	NAVSUP Pub 5535	AFM 78-26	DLAH 4215.36	MCO P4870.41B
3650	Chemical & Pharmaceutical Products Manufacturing Machinery.	SB 708-3650-1	NAVSUP Pub 5536	AFM 78-45	DLAH 4215.37	MCO P4870.42A
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment.	SB 708-4940-1	NAVSUP Pub 5537	AFM 78-48	DLAH 4215.38	MCO P4870.43A
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3405	Metalworking Saws & Filing Machines	SB 708-3405-1	NAVSUP Pub 5539	AFM 78-34	DLAH 4215.40	MCO P4870.47B
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3431, 3432, 3433, 3436, 3438.	Welding, Heat Cutting, and Metalizing Equipment	SB 708-3400-4	NAVSUP Pub 5541	AFM 78-39	DLAH 4215.42	MCO P4870.49A
3408, 3410	Machinery Center, Way Type Machines, Electrical and Ultrasonic Erosion Machines.	SB 708-3400-5	NAVSUP Pub 5542	AFM 78-41	DLAH 4215.43	MCO P4870.50B
3419	Miscellaneous Machine Tools	SB 708-3400-6	NAVSUP Pub 5547	AFM 78-46	DLAH 4215.44	MCO P4870.51A
3413	Drilling And Tapping Machines	SB 708-3413-1	NAVSUP Pub 5548	AFM 78-50	DLAH 4215.45	MCO P4870.53B
3411, 3412, 3414	Boring Machines, Broaching Machines. Gear Cutting and Finishing Machines.	SB 708-3400-7	NAVSUP Pub 5549	AFM 78-51	DLAH 4215.46	MCO P4870.55A
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3416	Mealworking Lathes	SB 708-3416-1	NAVSUP Pub 5552	AFM 78-54	DLAH 4215.49	MCO P4870.57A
5860	Stimulated Coherent Radiation Devices (Lasers)	SB 708-5860-1	NAVSUP Pub 5553	AFM 78-55	DLAH 4215.50	MCO P4870.58B
3415	Grinding Machines	SB 708-3415-1	NAVSUP Pub 5554	AFM 78-56	DLAH 4215.51	MCO P4870.59
3417	Milling Machines	SB 708-3417-1	NAVSUP Pub 5555	AFM 78-57	DLAH 4215.52	MCO P4870.60A
3670	Specialized Semiconductor, Microelectronic Circuit Board Manufacturing Machinery.	SB 708-3670-1	NAVSUP Pub 5557	AFM 78-58	DLAH 4215.53	MCO P4870.61

Mapping, Charting and Geodesy (MC&G) Property, as used in this subpart, means geodetic, geomagnetic, gravimetric, aeronautical, topographic, hydrographic, cultural, and toponymic data presented in the form of topographic, planimetric, relief, or thematic maps and graphics; nautical and aeronautical charts and publications; and in simulated, photographic, digital, or computerized formats.

Other Plant Equipment (OPE) is that part of plant equipment, regardless of dollar value, which is used in or in conjunction with the manufacture of components or end items relative to maintenance, supply, processing, assembly or research and development operations, but excluding items categorized as IPE.

Provide, as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property," means either to furnish, as in "Government-furnished property," or to acquire, as in "contractor-acquired property."

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 50416, Dec. 15, 1988]

245.302 Providing facilities.

245.302-1 Policy.

(a)(4) The Determination and Findings shall be coordinated with the program or project manager.

(S-70) A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at the contractor's election, to extend the time during which the contractor is entitled to use the property provided under the facilities contract.

[51 FR 46299, Dec. 23, 1986, as amended at 54 FR 30747, July 24, 1989]

245.302-70 Securing approval for facilities projects.

(a) The Secretaries of the Military Departments or their designees and the Directors of Defense Agencies may approve requests for Government-owned facilities projects if—

(1) The facilities projects that are funded from procurement appropriations will be approved on a location basis and shall not exceed $5 million for all property efforts (expansion, modernization, rehabilitation, etc.) during one fiscal year;

(2) It is a research and development-funded project that will not exceed $3 million per fiscal year; or

(3) The total plant and equipment investment cost to support a specific major system or subsystem (including ammunition-related project request) will not exceed $25 million during the projected acquisition or maintenance effort. (Approval authority shall not be redelegated lower than the level of Assistant Secretary.) Approval may be granted only when there is compliance with all provisions of this regulation and DoD Directive 4275.5, "Acquisition and Management of Industrial Resources."

(b) All projects which will exceed the above limitations will be submitted to the DASD(A&L)(PS) for approval.

(c) Facilities projects that involve real property transactions shall not be undertaken prior to reporting such transactions to the Committees on Armed Services of the House of Representatives and the Senate, as required by 10 U.S.C. 2662, and during the 30-day period prescribed therein. Further, Congress must be notified in advance of starting any construction regardless of cost. If not included in the annual budget, submission to all appropriate Congressional Committees will be made by using DD 1391 Forms.

245.302-71 Providing industrial plant equipment (IPE).

(a) Prior to acquiring IPE, having an item acquisition cost of $10,000 or more, DoD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tennessee 38114, to ascertain whether existing reallocable Government-owned facilities can be utilized. If the requested facilities are numerically controlled, DD Form 1342, Section VI (page 2), shall be prepared and submitted with the DD Form 1419. No acquisition of any listed item shall be made until a certificate of nonavailability is received from the Defense Industrial Plant Equipment Center (DIPEC). However, prior to issuing a certificate of nonavailability, DIPEC shall determine if technical data (e.g., parts listings, maintenance, overhaul and repair manuals, wiring diagrams, etc.) are available. If it is determined that such data is not available at the time of issuance of the nonavailability certificate for equipment, DIPEC may request, by an appropriate instruction in block 51 of DD Form 1419, that an additional set of technical (maintenance) data be acquired with the new facilities when they are obtained. This additional set of data shall be delivered to the repository address specified by DIPEC in block 51 of DD Form 1419. In addition to acquiring technical (maintenance) data for new facilities, a description of the features of numerically controlled facilities on DD Form 1342, Section VI (page 2), shall also be acquired.

(b) Acquisition of new numerically controlled facilities shall include the requirement for the builder to complete Section VI of DD Form 1342 in triplicate, affix one copy to inside of numerical control cabinet door in a manner to preclude removal or destruction, place two copies in an envelope, and tape to door near the first copy. When warranted by the urgency of the situation, requests for screening may be submitted to DIPEC by whatever means determined expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment:

(1) Requisition number;

(2) PEC/NSN;

(3) Description data sufficient to enable DIPEC to make an urgency determination of availability;

(4) Date item required;

(5) Name and address of requiring agency;

(6) Contract number and program;

(7) Statement as to whether item is for production or mobilization, replacement or modernization, whether item will be acquired if not available from DIPEC, and date of availability from contracting;

(8) Assigned urgency rating; and

(9) Estimated cost.

(c) Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

245.302-72 Providing ADPE as Government Property.

The proposed acquisition of automatic data processing equipment by a contractor shall be submitted through the Administrative Contracting Officer to Director, Defense Automation Resources Information Center (ATTN: DARIC-R), Cameron Station, Alexandria, VA 22304-6100, in accordance with Defense Automation Resources Management Manual, DoD 7950.1-M.

[53 FR 38176, Sept. 29, 1988]

245.303 Providing material.

245.303-2 Procedures.

When the contractor is to be responsible for preparing requisitioning documentation, the contract shall require such documentation to be prepared in accordance with DoD 4000.25-1-M, Military Standard Requisitioning and Issue Procedures (MILSTRIP).

[55 FR 19080, May 8, 1990]

245.310 Providing mapping, charting and geodesy property.

(a) All Government-Furnished Mapping, Charting and Geodesy (MC&G) Property is under the control of the Director, Defense Mapping Agency (DMA). (See DoD Directive 5105.40.)

(b) The clause at 252.245-7000 provides that Government-Furnished MC&G Property shall not be duplicated, copied, or otherwise reproduced for purposes of other than those necessary for performance of the contract.

(c) At the completion of performance of the contract, the contracting officer shall contact HQ DMA (PP), Bldg. 56, U.S. Naval Observatory, Washington, DC 20305-3000, for disposition instructions and then direct the contractor to either destroy or return all DoD-furnished MC&G property not consumed in the performance of the contract. If the material is to be returned to the Government, the contracting officer shall specify the location and means of shipment.

[53 FR 50416, Dec. 15, 1988]

245.310-1 Contract clause.

The contracting officer shall insert the clause at 252.245-7000, Government-Furnished Mapping, Charting and Geodesy Property, in solicitations and contracts when MC&G Property is to be furnished under the contract.

[53 FR 50416, Dec. 15, 1988]

Subpart 245.4—Contractor Use Rental of Government Property

245.401 Policy.

Government use includes use on contracts for foreign military sales. Use on contracts for foreign military sales shall be on a rental basis unless specific approval for rent-free use is granted.

[51 FR 46299, Dec. 23, 1986, as amended at 55 FR 19080, May 8, 1990]

245.402 Authorizing use of Government production and research property.

(a) A contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer shall request the latter to give contracting officer concurrence in such use. If concurrence is denied, the matter shall be raised to a level higher than the contracting officer.

245.403 Rental—use and charges clause.

(S-70) The policies and procedures of Recovery of Nonrecurring Costs in DoD Directive 2140.2, shall apply to the recovery of a fair share of DoD cost for special tooling and special test equipment. Where the recoupment thresholds are not met, charges for special tooling and special test equipment shall be assessed by an equitable method when determined by the cognizant contracting officer to be administratively practicable.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38182, Sept. 29, 1988]

245.405 Contracts with foreign Governments or international organizations.

(a) A contractor may use Government production and research property on work for foreign governments and international organizations only upon written approval of the contracting officer having cognizance of the property. Such approval shall be granted only if such use will not interfere with foreseeable requirements of the United States, and if:

(1) The work is undertaken as a DoD Foreign Military Sale; or

(2) In the case of a direct commercial sale, the foreign country or international organization would be authorized to place the contract with the Department concerned under the Arms Export Control Act.

(b) The Use and Charges clause shall not be applicable to wholly Government-owned plants operated by private contractors on a fee basis. In such cases, any sales to foreign countries or international organizations will require an asset use charge (see (c) below) in place of the Use and Charges clause.

(c) In those circumstances where the Secretary or designee determines that a special rental agreement or the Use and Charges clause is not appropriate or is impractical, and Government facilities are to be used for foreign military sales, an asset use charge will be computed and assessed by the DoD officials responsible for preparation of the DoD Offer and Acceptance (DD Form 1513).

(d) When a particular foreign government or international organization has funded the acquisition of specific production and research property, no rental charges, asset use charges, or nonrecurring recoupments shall be assessed that foreign government or international organization for the use of such property.

(e) Requests for waivers or reduction of charges for the use of Government facilities on work for foreign governments or international organizations shall be submitted to the contracting officer who shall refer the matter through contracting channels. Approval may be granted only by the Director, Defense Security Assistance Agency for particular sales which would, if made, significantly advance U.S. Government interests in North Atlantic Treaty Organization (NATO) standardization, or foreign acquisition in the United States under coproduction arrangements.

(f) Rental/asset use charges for use of U.S. production and research property on Foreign Military Sales (FMS) and commercial sales transactions to the Government of Canada are waived for all FMS agreements accepted and commercial contracts awarded on or before April 30, 1995. This waiver is based on an understanding wherein the Government of Canada has agreed to waive its rental/asset use charges.

[51 FR 46299, Dec. 23, 1986, as amended at 55 FR 30159, July 24, 1990]

245.407 Non-Government use of plant equipment.

(a) Non-Government use of Industrial Plant Equipment (IPE) exceeding 25% requires prior approval of the Assistant Secretary of the Army (RD&A), Assistant Secretary of the Navy (S&L), Assistant Secretary of the Air Force (RD&L), or the Director of the Defense Logistics Agency, unless specifically delegated to the Head of a Contracting Activity. This authority shall not be redelegated without formal OASD(P&L)(DASD (Logistics)) approval. Requests should be submitted by the contractor to the cognizant contract administration office at least six weeks in advance of the projected use and shall include:

(1) The total number of active IPE items involved and the total acquisition cost thereof; and

(2) An itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each item the nomenclature, plant equipment code, year of manufacture, and the acquisition cost.

The percentage of non-Government use shall be computed on the basis of the time available for use. For this purpose the contractor's normal work schedule as represented by the scheduled production shift hours shall be used. The base time period for determining percentages for non-Government use shall be neither less than three months nor more than one year. Non-Government use of IPE located at a single plant may be averaged for all items used having a unit acquisition cost of less than $25,000. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis. Approving officials shall retain for periodic review sufficient documentation of the circumstances justifying non-Government use approvals.

[51 FR 46299, Dec. 23, 1986, as amended at 54 FR 53620, Dec. 29, 1989]

Subpart 245.5—Management of Government Property in the Possession of Contractors

245.505-3 Records of material.

(f)(2)(ii) For DoD contracts, the contractor's material control system may physically commingle inventories that may include materials for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts so long as the contractor has adequate controls to ensure that the requirements of 242.7206 are met.

[54 FR 20596, May 12, 1989]

245.505-5 Records of plant equipment.

(a) DD Form 1342 may be used as a source document for setting up prescribed records.

245.505-6 Special reports of plant equipment.

The contractor shall prepare a DD Form 1342 for each item of equipment identified as Industrial Plant Equipment (IPE), including items which, though part of a manufacturing system, would otherwise qualify as industrial plant equipment. Section VI (page 2) of the DD Form 1342 will be prepared for each item of IPE with numerically controlled features. General purpose components of special test equipment, which would otherwise qualify as IPE, should not be reported until there is no longer a requirement for the test equipment. The DD Form 1342, including Section VI, as appropriate, will be prepared in accordance with instructions contained in AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment (IPE), at the time (a) of receipt and acceptance of accountability by the contractor; (b) major changes as specified by DLAM 4215.1 occur in the data initially submitted to DIPEC; (c) IPE is no longer required for the purpose authorized or provided; or (d) disposal is completed. The DD Form 1342 prepared at the time IPE is no longer required for the purpose authorized or provided shall reflect all changes in data not previously reported to DIPEC. The contractor shall retain the original of each DD Form 1342 which may be used as the official property record. Copies of the DD Form 1342, including Section VI, as appropriate, shall be forwarded directly to DIPEC through the property administrator. Each DD Form 1342 will be prepared and forwarded within 15 working days after the events which created the need for its preparation and forwarding. AR 700-43/NAVSUP PUB 5009/AFM 78-9/DLAM 4215.1 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (see 245.301).

245.505-14 Reports of Government property.

(a) The contractor's property control system shall provide annually a report, by contract, of all DoD property for which the contractor is accountable, categorized as follows:

(1) Acquisition cost of:

(i) Land and rights therein;

(ii) OPE (See 245.301);

(iii) IPE (See 245.301);

(iv) Special test equipment to which the Government has title (see FAR 45.101);

(v) Special tooling to which the Government has title (see FAR 45.101);

(vi) Agency-peculiar (military) property including reparables and other end items or components for which the Government continues to maintain an asset record while it is with the contractor (see 245.301);

(vii) Government material, including Government-furnished and contractor-acquired (see FAR 45.301 and FAR 45.101).

(2) Quantity of:

(i) Land (in acres);

(ii) OPE;

(iii) IPE;

(iv) Special test equipment;

(v) Special tooling;

(vi) Agency—peculiar (military) property.

(3) Additions to and deletions from the contract, in dollars, of:

(i) Land and rights therein;

(ii) Other real property;

(iii) OPE;

(iv) IPE;

(v) Special test equipment;

(vi) Special tooling.

(b) The above report shall be as of September 30 each year. Those property-bearing contracts which are closed with zero property balances prior to September 30 shall be reported at the time the property balances become zero. The prime contractor shall flow this reporting requirement to include DoD property in the possession of subcontractors. The prime contractor is responsible for reporting to DoD all property accountable to the contract, including that at subcontractor and alternate locations. The contractor shall prepare the report on DD Form 1662 (October 1986 or later version), DoD Property in the Custody of Contractors, or an approved substitute, and shall furnish it, in duplicate, to the property administrator no later than October 31 of each year. Office of Management and Budget No. 0704-0246 has been assigned to the report.

[52 FR 39535, Oct. 22, 1987, as amended at 53 FR 46459, Nov. 17, 1988; 53 FR 51561, Dec. 22, 1988; 54 FR 7429, Feb. 21, 1989]

Subpart 245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

245.600 Scope of subpart.

In connection with reporting, redistribution, and disposal of contractor inventory, 245.71 prescribes Forms, Instructions, and Reports applicable to DoD plant clearance actions.

245.601 Definitions.

Controlled substances means any of the following:

(1) Narcotic (opium), depressant, stimulant (demerol), or hallucinogenic drug (marijuana) or substance;

(2) Any other drug or substance found by the Attorney General to require control as provided by Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970; or

(3) Any other drug or substance required to be controlled by the U.S. by international treaty, convention or protocol.

Demilitarization means the act of destroying the military offensive or defensive characteristics inherent in certain types of equipment or material so as to prevent their further military or lethal use.

Production scrap means material generated as a scrap in the normal production process having only a remelting or reprocessing value, including textile clippings, metal clippings, chippings, borings, turnings, and similar types of scrap, including faulty castings and forgings.

Serviceable or usable property means property that has reasonable prospect of use or sale either in its existing form or after minor repairs or alterations; only property in Federal Condition Codes A1, A2, A4, A5, B1, B2, B4, B5, F7, or F8 (see 245.606-5).

245.603 Disposal methods.

245.603-70 Contractor performance of selected plant clearance duties and responsibilities.

(1) A DoD Component may, at its option and under the guidance in this section, provide instructions to its contract administration offices which would authorize selected contractors under its administrative cognizance to perform certain plant clearance functions under the surveillance of the contracting officer or a designated representative. Such authorizations should be considered by the DoD Component only when plant clearance personnel are stationed at the facility where the contractor's plant clearance function operates and when the DoD Component and the contractor agree that the volume of plant clearance actions warrants such an authorization.

(2) Such authorizations shall be made in writing and shall, as a minimum:

(i) Specify the plant clearance functions to be performed;

(ii) Apply to all Government contracts which contain a Government Property clause at one or more plants, as appropriate;

(iii) Specify that the authorization may be unilaterally cancelled in whole or in part by the Government through written notice by the contracting officer or a designated representative;

(iv) Provide for such direct Government participation in plant clearance cases as may be required by Government regulation or circumstances at hand. The authorization shall be approved at a level above the contract administration office as designated by the DoD Component having administrative cognizance over the contractor; and

(v) Designate the contractor authorized under (1) above to perform specified plant clearance functions as an "accredited contractor".

(3) In each case of such an authorization, the DoD Component will plan and conduct a program of surveillance which will insure effective and regular evaluations of contractor performance and prompt corrective actions when appropriate. The plant clearance case file maintained by the contractor shall be the official case file.

(4) When paragraphs (1) and (2) above are implemented, the following additional responsibilities shall be performed by the plant clearance officer:

(i) Evaluate the adequacy of contractor procedures for the performance of the tasks prescribed in (5) below. Insure that these procedures are complied with. Discrepant conditions must be promptly resolved in order for the contractor to remain accredited;

(ii) Advise the accredited contractor of the identity of redistribution screening activities and the number of copies of inventory schedules to be submitted to these activities for screening. This includes screening prescribed herein and prescribed by inventory control points and the plant clearance officer;

(iii) Review and act on the contractor's proposals to withdraw items of Government-furnished property from inventory schedules (see FAR 45.606-4);

(iv) Continuously evaluate physical, quantitative, and technical allocability of contractor inventory prior to its disposal by the accredited contractor. These evaluations shall be incorporated within the surveillance program required by (3) above. Greatest emphasis shall be placed on high dollar value property that constitutes a claim against the Government. In the event that assets are considered to be nonallocable, the contractor will be directed to delay disposition pending the contracting officer's resolution of the issue. Completion of SF 1423, Inventory Verification Survey is not required. However, the applicable questions on the SF 1423 should be answered as part of the evaluation program;

(v) Establish, with contractor assistance, criteria under which certain disposal determinations by the contractor will be reviewed and approved or disapproved by the plant clearance officer. The criteria should be detailed in the accredited contractor's plant clearance procedures;

(vi) Complete the first endorsement section of DD Form 1640, Request for Plant Clearance, upon receipt of incoming referral cases for subcontractor inventory. Inventory schedules will be forwarded to the contractor for plant clearance. Upon case completion, obtain the case file from the contractor, prepare a DD Form 1640, and forward the file to the referring activity;

(vii) Work with the contractor, buyers, and screeners of contractor inventory to the extent required to assure that the Government shall realize maximum asset reutilization and disposal proceeds; and

(viii) Provide continuous training and assistance to the contractor as requested or as necessary.

(5) The accredited contractor will perform the following designated tasks which are identified within the referenced paragraphs as plant clearance officer functions. The accredited contractor shall:

(i) Assign the Automatic Release Date (ARD) and screening release date (SRD), initiate screening prescribed herein or as prescribed by the plant clearance officer, and effect resulting transfer and donation actions (see FAR 45.608, 45.609);

(ii) Withdraw items, except for Government-furnished property, from inventory schedules without plant clearance officer approval and notify the affected screening activities. Plant clearance officer approval will be obtained for withdrawal of Government-furnished property from inventory schedules (see FAR 45.606-4);

(iii) Assure acceptability of inventory schedules. DD Form 1637, Notice of Acceptance of Inventory, is not required but may be used for internal contractor case coordination (see FAR 45.606-3);

(iv) Suspend disposition of property when assets are determined to be nonallocable by the plant clearance officer (see FAR 45.606-3);

(v) Arrange for the physical inspection of property by prospective transferees as appropriate;

(vi) Determine the method of disposal under established priorities (see FAR 45.603) and document disposal decisions and actions (see FAR 45.609, 45.610, 45.611, 45.613). Use of the DD Form 1641, Disposal Determination Approval, is not required as long as equivalent documentation is maintained. The plant clearance officer shall be notified in writing in advance in each instance when the contractor is bidding on property to be sold under FAR 45.610. Sales under FAR 45.610-3 shall not be conducted by an accredited contractor;

(vii) Account for disposal of all contractor inventory and application of proceeds. SF 1424, Inventory Disposal Report, or a contractor form containing comparable data elements is required to be submitted to the plant clearance officer (see FAR 45.610-3, 45.615);

(viii) Maintain the donable property file (see FAR 45.609);

(ix) Release property to eligible donees (see FAR 45.609);

(x) Properly prepare, approve, sign, and maintain official plant clearance files and required forms including:

(A) Plant clearance case number (see 245.7102-4);

(B) DD Form 1635, Plant Clearance Case Register, or comparable contractor document (see 245.7101-8);

(C) SF 120, Reporting of Excess Personal Property (see FAR 45.608-2 and FAR 45.608-8);

(D) DD Form 1342, DoD Property Record, and transmittal letter (see 245.7102-3); and

(E) DD Form 1348-1, DoD Single Line Item Release/Receipt Document, for transfers (turn-ins) to the Defense Property Disposal Service or inventory control points; and

(xi) All completed case files and subcontractor inventory cases received for plant clearance shall be retained by the contractor in the official case file.

245.603-71 Disposal of Contractor Inventory for NATO Cooperative Projects.

NATO cooperative project agreements may stipulate provisions for disposal of jointly acquired property without regard to any laws of the United States applicable to the disposal of property owned by the United States. Disposal of such property may include a transfer of the interest of the United States in such property to one of the other governments participating in the cooperative agreement or the sale of such property. Payment for the transfer or sale of any interest of the United States in any such property shall be made in accordance with the terms of the cooperative agreement. In those cases where disposal arrangements are included in the project agreement, disposal will be carried out in accordance with the agreement in lieu of the normal unilateral disposal determinations and procedures dictated by FAR 45.603 and 245.603-70 above.

[53 FR 38182, Sept. 29, 1988]

245.604 Restrictions on purchase or retention of contractor inventory.

(S-70) A contractor, when authorized to sell contractor inventory, shall not sell such inventory to persons known by him to be: (1) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory; (2) A member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for or within the Defense Reutilization and Marketing Program, or for the disposal of contractor inventory; or (3) An agent, employee or immediate member of the household of personnel in (1) and (2) above.

(S-71) The authority of a contractor to approve a sale, purchase, or retention at less than cost, by a subcontractor, and the authority of a subcontractor to sell, purchase, or retain at less than cost, contractor inventory with the approval of the next higher-tier contractor does not include authority to approve:

(1) A sale by a subcontractor to the next higher-tier contractor or to an affiliate of such contractor or of the subcontractor; or

(2) A sale, purchase, or retention at less than cost, by a subcontractor affiliated with the next higher-tier contractor.

(S-72) Each excluded sale, purchase, or retention requires the written approval of the plant clearance officer.

(S-73) (1) Contractor inventory possessing military offensive or defensive characteristics, not required within the Department of Defense, shall be demilitarized by the contractor in accordance with Defense Demilitarization Manual, DoD 4160.21-M-1. In unusual cases, the purchaser may be authorized by the contracting officer to perform the demilitarization in accordance with DoD 4160.21-M-1; *provided*, however, that in no case shall such authorization be granted to the purchaser if the inventory is dangerous to life or property.

(2) Contractor inventory classified by reason of military security, unless the classification is removed by proper authority, shall be disposed of in accordance with applicable security regulations or as otherwise directed by the contracting officer.

(3) Contractor inventory dangerous to public health or safety shall not be donated or otherwise disposed of unless rendered innocuous or until adequate safeguards have been provided.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38247, Sept. 29, 1988]

245.606-3 Acceptance.

(a) If the schedules are acceptable, the plant clearance officer shall, within 15 days, execute and transmit to the contractor a DD Form 1637, Notice of Acceptance of Inventory.

245.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(See 245.7001-4 for specific duties and responsibilities of DoD plant clearance officers.)

(d) *General Instructions for Completing Forms.*

(4) For the purposes of indicating condition of the property, the codes indicated below should be used in combination with the disposal condition codes (1-9, X, and S). Use a letter and a number (such as A1 or F7) or two letters (such as SS):

A. New, used, repaired, or reconditioned property which is serviceable and issuable to all customers without limitations or restriction. Includes material with more than 6 months shelf-life remaining.

B. New, used, repaired, or reconditioned property which is serviceable and issuable for its intended purpose but which is restricted from issue to specific units, activities, or geographical areas by reason of its limited usefulness or short service-life expectancy. Includes material with 3 through 6 months shelf-life remaining.

F. Economically reparable property which requires repair, overhaul, or reconditioning. Includes reparable items which are radioactively contaminated.

H. Property which has been determined to be unserviceable and does not meet repair criteria.

S. Property that has no value except for its basic material content.

(e) *Instructions for Completing Specific Forms.*

(4) *Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432).*

(ii) *Description.* Columns F1 and F2 apply to termination inventory that is included in the settlement proposal. Include cost of inventory acquired for performance of the entire contract in column F1. The cost of inventory acquired solely for the terminated portion of the contract will be shown in column F2. In the event of a partial contract termination, cost of inventory acquired for the entire contract must be prorated between the terminated and non-terminated portions of the contract.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38182, Sept. 29, 1988]

245.607 Scrap.

245.607-70 Pre-inventory scrap determinations.

The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. A plant clearance case will be established and limited screening performed in accordance with FAR 45.608-4. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38182, Sept. 29, 1988]

245.607-71 Segregation.

Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from other work.

245.607-72 Contractor's approved scrap procedure.

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this part. Production scrap and production spoilage may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken, mutilated, or otherwise rejected parts excess to overhaul and repair contracts, may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government-owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of FAR Part 45 and this supplement.

(e) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Reutilization and Marketing Service, ATTN: DRMS-OCR, 74 N. Washington Avenue, Battle Creek, Michigan 49017-3092, for disposition instructions.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38248, Sept. 29, 1988; 53 FR 46459, Nov. 17, 1988; 54 FR 46902, Nov. 8, 1989]

245.608 Screening of contractor inventory.

245.608-1 General.

(a) To promote maximum utilization within the Government, property included in the contractor's inventory schedules shall be screened prior to disposition by donation or sale. The plant clearance officer shall arrange, in such a manner as to avoid interruption of the contractor's operations, for physical inspection of such property at the contractor's plant if requested by the prospective transferees.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38182, Sept. 29, 1988]

245.608-2 Standard screening.

(b)(1) Screening from the first to the 30th day shall be within the procuring department and the requiring department if such is not the procuring department. The requiring department shall have the first priority for retention of the listed items.

[53 FR 38182, Sept. 29, 1988]

245.608-5 Procedures for Automatic Data Processing Equipment (ADPE).

(d)(1) Items of ADPE which are Government-owned or which are leased by the contractor under terms which provide the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Defense Automation Resources Information Center (DARIC) pursuant to DoD 7950.1-M, Automation Resources Management Program.

[53 FR 38182, Sept. 29, 1988]

245.608-7 Reimbursement of costs for transfer of contractor inventory.

Costs incident to movement of IPE under the direction and control of the Defense Industrial Plant Equipment Center shall be borne by the Defense Logistics Agency.

245.608-70 Contractor inventory redistribution system (CIRS).

Serviceable and usable contractor inventory of the type listed on SF Forms 1428, Inventory Schedule B or SF Forms 1434, Inventory Schedule E, having a National Stock Number (NSN) and a line item acquisition value (acquisition value of each unit times the number of units) in excess of $50, or having no NSN and a line item acquisition value in excess of $500 shall be processed as follows:

(a) The 90-day screening period normally applies and the plant clearance officer establishes the SRD and SCD; and

(b) Two copies of the SF Form 1428, SF Form 1434, or authorized substitutes will be transmitted by Standard Form 120 to the Defense Reutilization and Marketing Region—Battle Creek (DRMR—Battle Creek); and

(c) DRMR—Battle Creek will return an annotated copy of each SF Form 1428 or 1434 received to the plant clearance officer with a Notification of Receipt form attached. This notification will inform the plant clearance officer which items were processed, are not accepted, or are now available for local area screening; and

(d) Property submitted for CIRS-processing will be subjected to a 30-day DoD screening period. The requiring activity within the requiring Department shall have requisitioning priority over other activities within the requiring Department and over the procuring Department when the requiring and procuring Departments are different. DRMR—Battle Creek reports items not requisitioned to the General Services Administration on the 31st day, unless the plant clearance officer provided special instructions to the contrary on the Standard Form 120. For example, items not reportable to GSA, such as hazardous cleaners and solvents, otherwise usable, should be screened within DoD for redistribution to another user or the item manager; and

(e) DRMR—Battle Creek will issue shipping instructions on DD Form 1348-1 to the plant clearance officer. The plant clearance officer shall reroute requisitions received directly from the requisitioner to DRMR—Battle Creek during the first 45 days of the screening period. Requisitions received by DRMR—Battle Creek or by the plant clearance officer after the 45th day of the screening cycle shall be forwarded directly to the General Services Administration; and

(f) The plant clearance officer will instruct the contractor to send one copy of the completed DD Form 1348-1 to DRMR—Battle Creek, when shipment has been made; and

(g) Unless the contracting officer directs otherwise, motor vehicles generated under Army and Navy contracts shall not be screened through CIRS.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38182, Sept. 29, 1988; 53 FR 46459, Nov. 17, 1988]

245.608-71 Procedures for industrial plant equipment.

(a) *Reporting idle industrial plant equipment.* Industrial plant equipment (IPE) having an acquisition cost of $5,000 or more shall be listed on DD Form 1342, DoD Property Record. The DD Form 1342 shall be prepared by the contractor and submitted to the assigned Government property administrator for appropriate review and transmittal to the plant clearance officer. If the IPE has numerically controlled features, the contractor shall prepare and submit DD Form 1342, Section VI (page 2), Numerically Controlled Machine Data. Upon receipt of an acceptable DD Form 1342, the plant clearance officer will designate the 75th day from that date as the ARD, with the 90th day from that date as the SCD. The ARD will be entered in block 24 of the DD Form 1342 and shall not be extended, except as provided in (e) below. The plant clearance officer will forward 2 copies of the DD Form 1342 to the Defense Industrial Plant Equipment Center, Memphis, TN 38114, for all IPE in condition codes other than "X." Condition code "X" IPE shall be processed in accordance with agency procedures. The DD Form 1342 shall be forwarded to DIPEC within 15 working days after becoming idle. No other distribution of this form will be made by the plant clearance officer.

(b) *Screening—first through 30th day.* DIPEC shall screen excess IPE against all requirements submitted by Department of Defense activities, including Department of Defense reserve requirements, with priority being given to requirements of the owning Department through the 30th day. DIPEC will issue a shipping instruction containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions for items selected to the appropriate contract administration office.

(c) *Screening—31st through 75th day.* On the 31st day, DIPEC will forward excess data to the applicable General Services Administration regional office for Federal utilization screening through the 75th day. During the period from the 31st through the 75th day, the General Services Administration will approve requests from any agency of the Government on a "first come-first served" basis, and will approve and forward transfer orders containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved transfer orders to DIPEC.

(d) *Screening—76th through 90th day.* During this period the General Services Administration will provide for the screening of all remaining IPE for possible donation. The General Services Administration will receive and approve donation applications for IPE and will forward approved donation applications, containing appropriate accounting, funding, transportation, routing recommendations, and preservation instructions to the appropriate contract administration office. The General Services Administration will forward copies of the approved donation applications to DIPEC.

(e) If a Department of Defense requirement develops after the 90th day and the item is still available, the item will be shipped against such requirement, unless the plant clearance officer has justified and compelling reasons for not making the shipment.

(f) Items of plant equipment with an acquisition cost of less than $5,000, and items of plant equipment with an acquisition cost of more than $5,000 not qualifying as IPE, as defined in 245.301, shall not be reported to DIPEC but shall be reported and screened in accordance with FAR 45.608 and this supplement.

(g) The plant clearance officer shall, when IPE is transferred use-to-use or use-to-storage within DoD, assure that a copy of the completed shipping document is submitted to DIPEC. Sales of IPE that is excess to ownership but not to DoD requirements that is sold by GSA shall be reported to DIPEC in accordance with agency instructions.

[51 FR 46299, Dec. 23, 1986, as amended at 52 FR 34789, Sept. 15, 1987]

245.609 Donations.

(S-70) (1) Classification of eligible donees in order of precedence and approval requirements are:

(i) For property schedules transmitted to GSA—

(A) *Public airports.* Donations approved during the first five days of the donation screening period. State or local public airport donations require approval of an appropriate official of the Federal Aviation Administration, Department of Transportation, and GSA.

(B) *Service educational activities (SEA).* SEA's have the same order of precedence as in (2) below. Approval required of their national headquarters and GSA.

(C) *Educational, public health, and civil defense institutions and organizations.* Donations approved on a first-come, first-served basis with public airports and SEAs, during the last 10 days of the donation screening period. GSA has the over-all responsibility for selecting property determined to be usable and necessary for educational, public health and civil defense purposes, including research for any such purposes. Surplus property is screened and distributed for educational, public health, and civil defense purposes by State Agencies for Surplus Property (SASP). Approval of GSA is required.

(ii) For property screened in accordance with FAR 45.608, public airports, SEAs, and SASP screen and select property for donation approval by GSA on a first-come, first-served basis.

(iii) *Public bodies.* Surplus property may be donated to public bodies in lieu of destruction or abandonment in accordance with FAR 45.611.

(2) In addition to the activities indicated in (1) above, a Department may donate, without expense to the United States, certain material not needed by the Department of Defense to veterans' organizations, soldiers' monument associations, state museums, and incorporated museums operated and maintained only for educational purposes, whose charter denies them the right to operate for profit. For guidance as to limitations and requirements for donation to these activities, see Chapter X, para. F, DoD 4160.21-M.

245.610 Sale of surplus contractor inventory.

245.610-1 Responsibility.

(a) *Property under DoD Control*—(1) *General.* (i) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this section. The contractor is required to use best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(ii) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under FAR 45.609, or retained at cost pursuant to FAR 45.605, shall be sold in accordance with (2) below at any time after notification by the plant clearance officer that screening has been accomplished. Any sale shall be subject to the approval of the plant clearance offficer.

(iii) *Description of property.* Description of property must be adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(iv) *Condition.* Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, i.e., "well preserved," "some surface rust," "repairs required," etc. Condition codes shall not be used. Because of its non-specific meaning to the trade, the term "salvage" risks downgrading of the property in the bidder's viewpoint and shall not be used.

(v) *Lotting* shall be in accordance with the following:

(A) Unused items shall be lotted by make or manufacturer, except when quantities or dollar values are small;

(B) Commercially similar items shall be lotted together when practicable;

(C) Used and unused items shall be lotted separately, unless the quantity, value, or nature is such that it is uneconomical to sell separately;

(D) Within the bounds of economical considerations, the size of lots shall be influenced by an effort to encourage bidding by small businesses or individuals;

(E) No lot shall be so small that the administrative cost of selling will be disproportionate to the anticipated proceeds;

(F) An alternate bid for groups of items or for the entire offering may be solicited by use of an additional item described as follows:

Item ______ (Alternate Bid).

This item consists of all property listed and described in Items ______ to ______, inclusive. Award under this item may be made only if the highest acceptable bid on this item is equal to, or greater than, the total of the highest acceptable bids on Items ______ to ______, inclusive.

(vi) *Basis of sale* shall be:

(A) *Unit price basis.* Items offered for sale shall require the bid price to be stated in terms of the quantity or weight generally applied by industry in the commercial sale of such items.

(B) *Lot price basis.* When a sales offering is made on a lot price basis, bids shall be requested only for the entire lot. Use of the lot prices basis shall be held to a minimum, since it precludes adjustments. The lot price basis shall be used only when property cannot be sold by unit measure or the potential monetary recovery is small.

(vii) *Format of invitation.* In large sales, a summary list of items offered shall be set forth and used as an item bid sheet, with detailed item descriptions on attached sheets.

(viii) *Bidder's lists.* The plant clearance officer shall assure that commodity bidder's lists sufficient to obtain adequate competition in the sale of contractor inventory are maintained. The plant clearance officer may obtain additional listings, as required, from the Defense Reutilization and Marketing Service, ATTN: DRMS-OCR, 74 N. Washington Avenue, Battle Creek, Michigan 49017-3092. Use of listings maintained by DRMS is encouraged when extremely large quantities of property, special commodities, or unusual geographic location is involved.

(ix) *Auction, spot bid, and retail sales.* Auction, spot bid, and retail sales shall not be utilized for selling contractor inventory, unless approved on an individual case basis by the departmental headquarters of the administering activity.

(x) *Market impact.* Contracting Officers or plant clearance officers shall submit data to the Defense Logistics Services Center (DLSC) relative to the proposed sale of machine tools of any one type on hand at any single location in minimum condition A1, A2, or A4, with a total acquisition cost exceeding $250,000. Sales data shall include the Plant Equipment Code (PEC) number, noun description, quantity, location of property, and the proposed method of sale. DLSC shall advise the contracting officer or plant clearance officer within five working days whether or not sale proposal is approved. Priority for sales approval shall be given in those instances when plant clearance or other expedited actions are involved.

(2) *Competitive sales*—(i) *General.* Surplus contractor inventory shall be offered for sale on a competitive basis except as provided in (3) below. To the extent feasible, subcontractors and suppliers should be solicited when additional competition is likely to result. The plant clearance officer shall provide the contractor with instructions relative to the method of soliciting bids and the basis for offering the property for sale (i.e., serviceable or scrap). In determining the sales method to be used, the plant clearance officer shall consider the expected sales proceeds (based on previous experience and current market) versus the cost of conducting the sale. When it is determined that an individual sale will be uneconomical, the material to be sold shall be combined with other material offered for sale, disposed of through the contractor's approved production generated scrap disposal procedure or abandoned. Case files will be documented to show the basis for the decision. The contractor's overall program including all forms and procedures, shall be evaluated by the plant clearance officer and shall be subject to surveillance. To the extent necessary, the plant clearance officer may reserve the right to approve individual sales offerings prior to distribution. When the plant clearance officer determines that sale services are required, such services will be arranged for by the plant clearance officer directly with the organization requested to provide the services. The plant clearance officer will justify and document this need. These documents shall be a part of the plant clearance case file. The agreement reached will provide for the Defense Reutilization and Marketing Office or General Services Administration Regional Office to return total proceeds to the plant clearance officer for crediting in compliance with FAR 45.610-3.

(ii) *Solicitation of bids.* Contractors shall solicit bids by formal invitations, unless informal bid procedures have been approved by the plant clearance officer as provided in (B) below:

(A) *Formal bid procedures.*

Bids shall be solicited a minimum of 15 calendar days in advance of the opening of bids to allow bidders an adequate opportunity to inspect the property and prepare and formally submit bids;

Invitations shall be circulated to a sufficient number of prospective bidders to assure wide competition, including the original suppliers and those prospective bidders designated by the plant clearance officer and the contractor;

In addition to mailing or delivering a notice of the proposed sale to all prospective bidders, the contractor may supplement this sales method by—

Displaying a notice of the proposed sale in appropriate public places;

Displaying a notice of the proposed sale in appropriate trade journals or magazines; or

Publishing a notice of the proposed sale in a newspaper of general circulation in the locality in which the property is located, when the results of such paid commercial advertising is expected to justify the additional expenses involved.

When the acquisition cost of property to be sold at one time, at one place, is $250,000 or more, notice of each such proposed sale shall be transmitted to the U.S. Department of Commerce, Commerce Business Daily Office, Sales Section, P.O. Lock Box 5999, Chicago, Illinois, 60680. The notice shall be sent at as early a date as possible in advance of the sale but at least 20 days prior to the date when the bids will be opened, or, in the case of spot bid or auction sale, when the sale will be conducted. Such notice shall be transmitted by fastest mail available and shall be in synopsis form suitable for printing directly from the text so transmitted without editing or condensing. Double space lines will be used to describe each sales action; and the length of the line should be approximately 65, but not to exceed 69 character spaces and will contain the following information in the order listed: the name and address of the contractor who will issue the invitation; the name or title, address, and telephone number of the official from whom copies of the sales offering and other information can be obtained; a description of the property to be sold; when deemed desirable, the total estimated acquisition cost; the number of the invitation or sale; the date of the sale or bid opening, the types of sale, i.e., sealed bid, spot bid, or auction; and the location(s) of the property. The utmost care should be exercised in describing the types of property to be sold in order to assure interest by the maximum number of potential buyers but, at the same time, condense the information so that minimum space in the Department of Commerce publication will be required for printing. Where the acquisition cost is less than $250,000 such notice may be transmitted, when considered desirable, in accordance with the procedures prescribed above.

(B) *Informal bid procedures.* When the amount or value of the property is not large enough to warrant preparation of a formal notice of the proposed sale or other special circumstances are present, invitations to bid may, with the approval of the plant clearance officer, be issued orally, by telephone or by other informal media, so long as the element of competition is maintained and each such sale is fully documented to include a record of solicitations and written confirmation of informal bids. Any bid by the contractor or its employees shall be submitted to the plant clearance officer prior to solicitation of bids by the contractor from other prospective bidders.

(iii) *Formal invitations.* Sale by formal invitation shall include as a minimum general sale terms and conditions provided in 245.7102-6(a) and, when necessary, special conditions in 245.7102-6(b). The plant clearance officer or representative shall be present to witness bid openings. Within two working days after bid opening, the contractor shall submit to the plant clearance officer two copies of an abstract of all bids, signed by the witnessing Government representative. All awards shall be subject to the approval of the plant clearance officer as indicated in (iv) below.

(iv) *Bid reservations.* All invitations for bid shall reserve the right to reject any or all bids and shall require payment of the full purchase price prior to delivery of the property to the purchaser.

(v) *Approval of sale.* Bids shall be evaluated by the plant clearance officer to establish that the sale price is fair and reasonable in the light of reasonable knowledge or test of the market, due regard being given to current prices for products for which quotations are published and to the circumstances, nature, condition, quantity, and location of the property. Current market price appraisal or price received may be obtained from DRMS upon request. Award shall be approved to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered. Award shall not be approved to any bidder who would not be eligible to enter into a sales contract with the Department of Defense in accordance with the provisions of the Consolidated List of Debarred, Suspended, and Ineligible Contractors. If it is determined that a compelling reason exists to make an award to a contractor on the Consolidated List, the plant clearance officer shall request approval from the departmental headquarters of the administering activity.

(vi) *Award by contractor.* The plant clearance officer shall notify the contractor within five working days of the bidder to whom an award shall be made. The contractor shall make the award, collect the proceeds of sale, and release the property to the purchaser. The contractor shall provide the plant clearance officer with evidence of delivery reflecting actual quantities released to the purchaser.

(3) *Negotiated sales.* (i) Negotiated sales, including purchases or retentions at less than cost by the contractor, may be made when the contracting department or the plant clearance officer determines and documents in accordance with FAR Subpart 1.7, as appropriate, that the use of this method of sale is essential to expeditious plant clearance, or is otherwise justified on the basis of circumstances enumerated below, *provided,* that the Government's interests are adequately protected. Negotiated sales, including purchases or retentions at less than cost by the contractor, shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the property was offered for competitive sale. Specific conditions justifying negotiated sales are:

(A) Scientific equipment allocated to terminated research and development contracts with educational institutions;

(B) When no acceptable bids have been received as a result of competitive bidding under a suitably advertised sale;

(C) When property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(D) When the disposal will be to states, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained;

(E) When the specialized nature and limited use potential of the property would create negligible bidder interest;

(F) When removal of the property would result in a significant reduction in value, or the accrual of disproportionate expenses in handling; or

(G) When it can be clearly established that such action is essential to the Government's interests.

(ii) In those instances when the contracting department has concluded that it is appropriate to sell production equipment to the contractor in possession by means of noncompetitive negotiated sale, the department will provide the CAO with the required sales justification including any special sales provisions that may be appropriate.

(4) *Applicability of antitrust laws.* When contractor inventory with an acquisition cost of $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interest, the Department concerned shall promptly notify the Attorney General and the Administrator, General Services Administration, of the proposed disposal and the probable terms or conditions thereof. Prior to approving or effecting the proposed disposition, the plant clearance officer shall obtain antitrust clearance by transmitting the following information relative to the proposed sale through departmental channels of the administering activity for submission by that activity to the Department of Justice and the General Services Administration: Report Control Symbol DD DR&E(AR) 1492 has been assigned for this reporting requirement.

(i) Location and description of property (specifying the tonnage, if scrap);

(ii) Proposed sale price of property (explaining the circumstances if proposed purchaser was not highest bidder);

(iii) Acquisition cost of property of Government;

(iv) Manner of sale, indicating whether by—

(A) Sealed bid (specifying number of purchasers solicited and bids received),

(B) Auction or spot bid (stating how sale was advertised), or

(C) Negotiation (explaining why property was not offered for sale by competitive bid);

(v) Proposed purchaser's name, address, and trade name (if any), under which proposed purchaser is doing business;

(vi) If a corporation, give name of state and date of incorporation, and name and address of—

(A) Each holder of 25 percent or more of the corporate stock,

(B) Each subsidiary, and

(C) Each company under common control with proposed purchaser;

(vii) If a partnership, give—

(A) Name and address of each partner, and

(B) Other business connections of each partner;

(viii) Nature of proposed purchaser's business, indicating whether its scope is local, statewide, regional, or national;

(ix) Estimated dollar volume of sales of proposed purchaser (as of latest calendar or fiscal year);

(x) Estimated net worth of proposed purchaser; and

(xi) Proposed purchaser's intended use of property. Disposition shall be withheld pending receipt of advice from the Attorney General as to whether the proposed disposal action would tend to create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises that the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws, such disposition will not be made. When property with a total acquisition cost of $3,000,000 or more is offered for sale on a competitive bid basis, the condition of sale specified in 245.7102-6(b)(8) shall be included in the invitation for bid. When the sale is not competitive, the prospective purchaser shall be informed that final consummation of the sale is subject to determination by the Attorney General. The purchaser on either a competitive or noncompetitive sale shall be required to complete a questionnaire, providing the information outlined in (v) through (xi) above.

(5) *Foreign contractor inventory.*

(i) To prevent diversion, transshipment, or re-export of contractor inventory located in foreign countries to prohibited destinations and the use of such inventory adversely to the interests of the United States, the sale or other disposition of such inventory by the contractor, including sales to foreign governments, shall be made in accordance with (ii) and (iii) below.

(ii) Sales contracts or other documents for passing title to foreign contractor inventory shall contain the following certificate:

> The Purchaser certifies that the property covered by this contract will be used in (insert name of country). In the event resale or export is to be effected by the Purchaser of any of the property, acquired at a price in excess of One Thousand United States Dollars ($1,000) or its equivalent in other currency at the official rate of exchange, the Purchaser agrees to obtain the approval of ____________ (insert name and address of Sales Contracting Officer).

(iii) The sales contracting officer shall approve sales contracts and requests for approval of resales or exports only if:

(A) The proposed purchaser's name does not appear on the Consolidated List of Debarred, Suspended and Ineligible Contractors, and

(B) If the sales contract contains a provision prohibiting exports by purchasers and subpurchasers to communist areas, as listed in FAR 25.702.

(iv) Any disposals of foreign contractor inventory by the United States Government, as distinguished from disposal by a contractor, shall be in accordance with the security trade control regulation on foreign excess sales, and regulations dealing with integrity and reliability checks.

(v) Generally, disposal activities of the Military Departments shall be utilized to accomplish the disposition of surplus contractor inventory located in foreign countries except Canada. Contractor-conducted sales may be authorized, *provided* the interests of the Government are adequately protected.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38183, 38248, Sept. 29, 1988; 53 FR 46459, Nov. 17, 1988; 54 FR 46902, Nov. 8, 1989]

245.610-3 Proceeds of sale.

(S-70) When payments are due the contractor under the applicable contract, and unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be credited to the Government as part of the settlement agreement, or otherwise credited to the price or cost of the work covered by the contract, or applied in the manner directed by the contracting officer. The plant clearance officer will maintain an open suspense record until the plant clearance officer has verified that credit has in fact been applied, unless another Government representative has specifically assumed this responsibility.

(S-71) Proceeds from contractor-conducted sales which have not been credited as provided in (S-70) above shall be collected by the contractor and remitted to the plant clearance officer.

(S-72) All proceeds of sale remitted to the plant clearance officer shall be delivered to the designated disbursing officer by means of DD Form 1131, Cash Collection Voucher, within two working days after receipt. Transmittals shall identify the acquisition contract by number and name of the contractor.

245.612-3 Special storage at the government's expense.

(a) Before authorizing retention of items in storage for anticipated future use, the contracting officer shall ensure that sufficient funds are available to pay the storage and any related tasks required of the contractor. The contracting officer shall ensure that retention decisions are reviewed at least annually to determine whether continued storage is appropriate.

(b) All storage contracts shall be fully funded and separately priced to include all allocable costs.

[53 FR 51561, Dec. 22, 1988]

Subpart 245.70—Appointment of Property Administrator

245.7001 Appointment of property administrator.

245.7001-1 Selection, appointment, and termination.

The selection, appointment and termination of appointment of property administrators shall be made in writing by the Head of a Contracting Activity or designee for the Defense Logistics Agency and by the head of the contract administration office or designee for the other Departments. In selecting qualified property administrators, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

245.7001-2 Evaluation criteria.

In considering experience, training and education, the following shall be evaluated:

(a) Experience in accounting, material control, inventory control and allied functions;

(b) Formal education or specialization in such areas as evaluating, monitoring, administering, or coordinating industrial property programs or implementing plans and policies in support of diversified property control system; and

(c) Knowledge of the provisions of this and other applicable regulations.

245.7001-3 [Reserved]

245.7001-4 Duties and responsibilities of plant clearance officer.

The plant clearance officer shall be responsible for:

(a) Providing the contractor with instructions and advice regarding the proper preparation of inventory schedules;

(b) Accepting or rejecting inventory schedules and DD Form 1342;

(c) Conducting or arranging for inventory verification;

(d) Initiating prescribed screening and effecting resulting transfer and donation actions;

(e) Final plant clearance of contractor inventory;

(f) Pre-inventory scrap determinations, as appropriate;

(g) Evaluating the adequacy of the contractor's procedures for effecting property disposal actions;

(h) Determining method of disposal;

(i) Surveillance of contractor-conducted sales;

(j) Accounting for all contractor inventory reported by the contractor;

(k) Advising and assisting, as appropriate, the contractor, inventory control manager, other federal agencies, or higher headquarters in all actions relating to the proper and timely disposal of contractor inventory;

(l) Approving method of sale, evaluating bids, and approving sale prices for contractor-conducted sales;

(m) Recommending the reasonableness of selling expenses on contractor-conducted sales;

(n) Securing anti-trust clearance, as required; and

(o) Advising the contracting officer on all property disposal matters.

Subpart 245.71—Forms, Instructions, and Reports

245.7101 Forms.

The forms listed below are prescribed for use in the performance of plant clearance actions covered in FAR subpart 45.6 and subpart 245.6.

245.7101-1 Standard Form 97.

Certificate of Release of a Motor Vehicle (Agency Record Copy) will be executed by the contracting officer and furnished to the purchaser. Plant clearance officers will process Standard Form 97 in connection with transfers, donations, and sales of motor vehicles. Precautionary measures will be taken to prevent unauthorized persons from obtaining these forms. (245.7102-6)

245.7101-2 DD Form 1131.

Cash Collection Voucher shall be used to remit proceeds of sale to the appropriate disbursing officer.

245.7101-3 DD Form 1149.

Requisition and Invoice Shipping Document may be used for transfers and donations of excess or surplus contractor inventory, except IPE shall ordinarily be shipped by DD Form 1348-1, provided that any donation of IPE may be shipped via DD Form 1149.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38183, Sept. 29, 1988]

245.7101-4 DD Form 1342.

DoD Property Record shall be used to report idle industrial plant equipment to DIPEC for worldwide screening.

245.7101-5 DD Form 1640.

Request for Plant Clearance shall be used to request plant clearance assistance or transfer plant clearance.

245.7101-6 DD Form 1638.

Report of Excess and Surplus Contractor Inventory shall be used to provide a uniform reporting system of essential management data reflecting the scope and effectiveness of the contractor inventory utilization and disposal program.

245.7101-7 DD Form 1641.

Disposal Determination/Approval shall be used to support disposal determinations.

245.7101-8 DD Form 1635.

Plant Clearance Case Register provides a permanent numerical listing of plant clearance cases and shall be maintained by each office performing a plant clearance function. The space provided on the right-hand side of the form may be used for additional columns and headings considered essential by management officials. In those instances when the plant clearance register has been mechanized, a mechanized form may be used in lieu of the DD Form 1635.

245.7101-9 DD Form 1348-1.

DoD Single Line Item Release/Receipt Document shall be used for all transfers of idle Industrial Plant Equipment and Contractor Inventory Redistribution System (CIRS) inventory when directed by DIPEC.

245.7101-10 DD Form 1637.

Notice of Acceptance of Inventory shall be prepared to open each case and shall be distributed as follows: original to the contractor, one copy to the property administrator, and one copy to the termination contracting officer when termination inventory is involved.

[53 FR 38183, Sept. 29, 1988]

245.7102 Instructions.

Additional instructions are provided below for completing the forms or reports prescribed in this section.

245.7102-1 Instructions for performing inventory verification and determination of allocability.

The following instructions shall be observed in verifying inventory schedules:

(a) *Allocability.* Determine allocability of inventory by reviewing contract requirements, delivery schedules, bills of material, and other pertinent material. Determine whether schedules include:

(1) Material which would not have been required for completion of the terminated or modified portion of the contract;

(2) Material in quantities indicating an unreasonable anticipation of contract requirements; or

(3) Material which might be utilized on the continuing portion of the contract, or diverted to other work of the contractor, either commercial or Government. Utilize sound judgment and experience gained during the life of the contract in detecting common items. In addition review—

(i) Contractor's purchase orders for current acquisition of similar material,

(ii) Contractor's plans and orders for current and scheduled production,

(iii) Contractor's stock record cards, and

(iv) Contractor's bills of material prepared for items similar to the terminated or modified items.

(b) *Quantity.* Assure that the quantities of inventory available are in accordance with the quantities listed on the inventory schedules. While a complete physical count of each item of inventory normally need not be performed, sufficient checks to assure that the quantities are accurate shall be performed.

(c) *Condition.* Assure that the condition of the inventory is in accordance with that shown on the inventory schedules.

245.7102-2 DD Form 1638.

Report of Excess and Surplus Contractor Inventory shall be used by all contract administration offices having plant clearance responsibility for reporting cases under which disposition of contractor inventory actually has been effected. Cases transferred to other offices will not be included. Only the column total for each line of this report will be completed, unless the departmental headquarters of the administering activity desires a breakout of DIPEC-controlled property and directs completion of other column. Reports shall be prepared on a quarterly basis covering report periods ending 31 March, 30 June, 30 September, and 31 December, and shall be submitted in duplicate to the Departmental Headquarters of the administering activity, no later than 10 working days after the close of the report period. This reporting requirement is assigned Report Control Symbol DD(I&L)(Q)1430. All items on the report are self-explanatory except as follows:

(a) *Line 1.* Insert exact totals from line 7 of preceding report.

(b) *Line 2.* Insert net increase or decrease due to shortage, overages, errors, or withdrawals (other than purchases or retentions at cost).

(c) *Line 3.* Insert totals representing all excess inventory reported by the contractors for plant clearance purposes during reporting period.

(d) *Line 4.* Insert total of lines 1, 2, and 3.

(e) *Line 5.* Insert totals representing all plant clearance cases completed during the reporting period. Cases shall not be reported as completed until physical removal (or other final disposition) has been accomplished. Acquisition cost must equal acquisition cost on line 19.

(f) *Line 8.* Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost.

(g) *Line 9.* Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, or restocking charges.

(h) *Line 10.* Insert total acquisition cost of all transfers accomplished during the reporting period. On lines 10A through 10H, insert subtotals representing value of transfers to each service or agency indicated. Line 10 represents the total of the individual amounts shown on lines 10A through 10H. Caution should be taken to exclude the amount on lines 10A through 10H when obtaining the grand total on line 19 of the several columns of Section II.

(i) *Lines 12 through 14.* Insert gross proceeds. When approved costs of sale are reimbursed from proceeds, net proceeds shall be identified in "Remarks".

(j) *Line 15.* Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(k) *Lines 16 and 18.* Lines 16 and 18 may be used to identify and report transactions not otherwise identified.

(l) *Line 19.* Insert total of lines 8 through 18. Acquisition cost must equal acquisition cost on line 5.

245.7102-3 Instructions for establishing a plant clearance case.

Upon receipt of acceptable inventory schedules or DD Form 1342 from the contractor or from other Government sources provided by this Part, the plant clearance officer shall assign a plant clearance case number in accordance with 245.7102-4 and establish a plant clearance case file. The case number, contractor's name, and contract number shall be identified on the case folder. Termination inventory shall be identified with the word "Termination" on the outside of the case folder to insure priority handling. Separate submissions of inventory schedules and DD Forms 1342, applicable to one contract at the same location, shall be consolidated, whenever possible, under one plant clearance case. The plant clearance case file, as a minimum, shall contain the following:

(a) Copy of inventory schedules or DD Form 1342. (The copy of the inventory schedule will be annotated by the plant clearance office to reflect all disposal actions accomplished. Upon completion of all plant clearance actions, this copy should reflect disposition of all inventory reported for plant clearance action.);

(b) Copy of letters or transmittal documents forwarding contractor inventory to the appropriate screening activity;

(c) Copies of all shipping instructions, correspondence, or other instructions directing the disposition of contractor inventory, or evidence of no requirements;

(d) Copies of all shipping documents accomplishing transfer or shipment of contractor inventory;

(e) Copy of Inventory Verification Survey or other forms evidencing completion of allocability review;

(f) Copies of appropriate forms authorizing donation;

(g) Copies of all appropriate forms evidencing the sale of contractor inventory;

(h) Appropriate documentation indicating proper disposition of any proceeds resulting from plant clearance action;

(i) Copies of all other correspondence or forms bearing on disposal actions concerned with the case;

(j) Copies of all pertinent correspondence and approvals concerning Property Disposal Review Board cases, and antitrust clearance, when required; and

(k) Copy of Inventory Disposal Report.

245.7102-4 Instructions for assigning plant clearance case number.

(a) The plant case number shall consist of a three-part, 11-digit number constructed as follows:

(1) The first part shall be a six digit (alphanumeric combination), as shown in the DoD Activity Address Directory assigned to the contract administering activity.

(2) The second part, digits 7 through 10 shall consist of the following: 7th through 9th digits—Consecutively numbered serial number, locally as-

signed, using alpha and numeric characters commencing with 001 at the beginning of each calendar year, and continuing as necessary through ZZZ.

(3) The third part, 11th digit, will be a single alpha code to identify the Department:

C—Army
Q—Navy
E—Air Force
L—Marine Corps
U—Defense Logistics Agency
N—Defense Nuclear Agency
M—Defense Mapping Agency
S—National Aeronautics and Space Administration
O—Non-DoD Activities

(b) Combined, the plant clearance case number assigned by the plant clearance officer will be in accordance with the following examples:

"S4403A-0010-Q" and "S4403A-ZZZ2-Q"

(1) "S4403A" indicates that the Dallas Defense Contract Administration Services Region is designated as the office to which the plant clearance officer is assigned.

(2) "0010" indicates that this is the first case established by the Dallas Defense Contract Administration Services Region in calendar year 1980 and 1982 the 8199th case in calendar year 1972.

(3) "Q" indicates that the Navy is the owning military service.

(c) The plant clearance case number assigned will be recorded on DD Form 1635, Plant Clearance Case Register, which will provide a permanent numerical listing of plant clearance cases.

[51 FR 46299, Dec. 23, 1986, as amended at 53 FR 38183, Sept. 29, 1988]

245.7102-5 Form letter for transmitting DD Form 1342 to DIPEC.

The following minimum information shall be included in the letter:

(1) The number of DD Form 1342 included;

(2) Automatic Release Date;

(3) Screening Complete Date;

(4) Contractor's name and address;

(5) Procurement Instrument Identification (Contract) Number;

(6) The name and address of the contracting activity that awarded the facility or other type contract which permitted the contractor to acquire the industrial plant equipment;

(7) The location of the industrial plant equipment;

(8) Total acquisition cost;

(9) A note stating that the ARD will not be extended;

(10) A note substantially as follows:

All requests for transfer or shipment must indicate appropriate fund citation for packing, crating, and handling charges. Government Bills of Lading (GBL) should be furnished when possible. If shipments will be accomplished by other than a GBL, DIPEC must cite transportation funds;

and

(11) A signature block containing the name of the plant clearance officer.

245.7102-6 General sales terms and conditions, and special conditions of sale.

(a) The following general sales terms and conditions shall be included, as a minimum, in contractor-conducted sales by formal invitation:

(1) *Inspection.* The Bidder is invited, urged, and cautioned to inspect the property to be sold prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation. In no case will failure to inspect constitute grounds for the withdrawal of a bid after opening.

(2) *Condition and location of property.* Unless otherwise specifically provided in the Invitation, all property listed therein is offered for sale "as is" and "where is." If it is provided therein that the Contractor shall load, then "where is" means f.o.b. conveyance at the point specified in the Invitation. The description is based on the best available information. However, the Contractor makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property or its fitness for any use or purpose. Except as provided in Conditions No. (8) and (10), no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

(3) *Consideration of bids.* The Bidder agrees that its bid will not be withdrawn within the period of time specified for the acceptance thereof

following the opening of bids (sixty (60) calendar days if no period is specified by the Contractor or by the Bidder, but not less than ten (10) calendar days in any case) and that during such period its bid will remain firm and irrevocable. The right is reserved to reject any or all bids, to waive any technical defects in bids, and unless otherwise specified in the offering or by the Bidder, to accept any one item or group of items in the bid. Unless the Invitation otherwise provides, bids may be submitted on any or all items. However, unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that item. In case of error in the extension of prices, unit prices will govern.

(4) *Payment.* The Purchaser agrees to pay for property awarded to the purchaser in accordance with the prices quoted in the purchaser's bid. Payment of the full purchase price, subject to any adjustment pursuant to Condition No. (8), must be made within the time specified for removal and prior to delivery of any of the property. In the event that any adjustment is made pursuant to Condition No. (8), payment must be completed immediately subsequent to such adjustment. The balance of the purchase price after applying the total bid deposit made by the Purchaser (if a bid deposit was required) under the Invitation (or otherwise the full purchase price) shall be paid to the Contractor in cash or by certified check, cashier's check, traveler's check, bank draft, or postal or express money order. The Contractor reserves the right to apply any bid deposits made under this Invitation by a Bidder against any amounts due to the Contractor under a contract awarded by the Contractor under this Invitation for Bid. In those instances where the total sum becoming due to the Contractor from the Purchaser on a contract awarded to the Purchaser under the Invitation is less than the total amount deposited with the Purchaser's bid, the difference shall be promptly refunded. Deposits accompanying bids which are not accepted shall be promptly returned.

(5) *Title.* Unless otherwise specified in the Invitation, title to the items of property sold hereunder shall vest in the Purchaser as and when full and final payment is made, except that if the Invitation provides that loading will be performed by the Contractor, title shall not vest until such payment and loading are completed. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing, a certificate of release, Standard Form 97, Certificate of Release of a Motor Vehicle, executed by the Contracting Officer (or a State certificate of title), shall be furnished for each vehicle and piece of equipment.

(6) *Delivery and removal of property.* Unless otherwise specified in the Invitation, the Purchaser shall be entitled to obtain the property upon vesting of title of the property in the Purchaser. Delivery shall be made at the designated location, and the Purchaser shall remove the property at the Purchaser's expense within the period of time originally specified in the Invitation or within such additional time as may be allowed by the Contractor. The Purchaser shall reimburse the Contractor for any damage to the Contractor's property caused by the removal operations of the Purchaser. If the Purchaser is permitted by the Contractor to remove the property after the expiration of the period prescribed or allowed for removal, the Contractor, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge.

(7) *Default.* If the successful Bidder fails to make full payment, to remove property on the specified date, or to comply with any other terms and conditions thereof, the right is reserved to sell or otherwise dispose of any or all such property and to charge losses and expenses incidental thereto to the account of the defaulting Bidder. The bid deposit (if required in the Invitation) shall be applied against any such losses and expenses.

(8) *Adjustment for variation in quantity or weight.* When property is sold on a "unit price" basis, the Contractor reserves the right to vary the

quantity or weight delivered by fifteen percent (15%) from the quantity or weight listed in the Invitation; and the Purchaser agrees to accept delivery of any quantity or weight within these limits. The purchase price shall be adjusted upward or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. No adjustment for variation shall be made where property is sold on a "price for the lot" basis.

(9) *Weighing.* When weighing is necessary to determine the exact purchase price hereunder, the Purchaser shall arrange for and pay all expenses of weighing material. All switching charges shall be paid by the Purchaser. When removal is by truck, weighing shall be subject to supervision and accomplished on (i) Contractor scales, (ii) certified scales, or (iii) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales or by other means acceptable to the railroad for freight purposes. Approved weighing shall establish the exact purchase price and govern the making of full payment thereon.

(10) *Risk of loss.* After mailing notice of award and prior to the date specified for removal, the Contractor shall be responsible only for the exercise of reasonable care for the protection of the property. After passage of title and after the date specified for removal of the property or any extension approved in writing by the Contractor, all risk of loss, damage, or destruction from any cause whatsoever shall be borne by the Purchaser.

(11) *Limitation on contractor and Government liability.* The measure of Contractor and Government liability in any case when liability of Contractor and Government to the Purchaser has been established shall not exceed refund of such portion of the purchase price as the Contractor may have received.

(12) *Oral statements and modifications.* Any oral statement or representation by any representative of the Contractor changing or supplementing the contract or any condition thereof is unauthorized and shall confer no right upon the Purchaser.

(13) *Eligibility of bidders.* The Bidder certifies that the Bidder is not: (i) A civilian employee of the Department of Defense or the United States Coast Guard whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (ii) A member of the Armed Forces of the United States, including the United States Coast Guard, whose duties include any functional or supervisory responsibility for disposal of contractor inventory; (iii) An agent, employee or immediate member of the household of personnel in (i) and (ii) above.

(14) *Claims liability.* The Purchaser or Bidder agrees to save the Contractor and Government harmless from any and all claims, demands, actions, debts, liabilities, judgments, costs, and attorney's fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property of, and injuries to or the death of any and all persons whatsoever, in any manner caused or contributed to by the Purchaser or Bidder, their agents, servants or employees, while in, upon, or about the sale or the property site on which the property sold or offered for sale is located, or while going to or departing from such areas; and to save the Contractor and Government harmless from and on account of damages of any kind which the Contractor may suffer as the result of the acts of any of the Purchaser's agents, servants, or employees while in or about the said sites.

(b) The following special conditions of sale shall be included in contractor-conducted sales by formal invitation, as required, or at the specific request and direction of the plant clearance officer:

(1) *Demilitarization.* When demilitarization of property by the Purchaser is required, whether on or off the contractor or Government premises, the following special conditions shall be included in the invitation for bids on property located in the United States or outside the United States, as appropriate—

(i) *Demilitarization.* Item(s) _____ are required to be demilitarized by the Purchaser in the manner and to the degree set forth below: ______

(A) Insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 2 of Defense Demilitarization Manual, DoD 4160.21-M-1 for property located in the United States.

(B) For property located outside the United States, insert item number(s) and specific demilitarization requirements for item(s) shown in Attachment 1, Part 3 of DoD 4160.21-M-1.

(ii) *Demilitarization on Government premises.* The property requiring demilitarization shall not be removed from Government premises and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization and further agrees to do any necessary work to restore the working area to its present condition after completely removing the demilitarized property.

(iii) *Demilitarization on other than Government premises.* The property requiring demilitarization shall be demilitarized by the Purchaser under supervision of qualified Department of Defense personnel and title shall not pass to the Purchaser until demilitarization has been completed by the Purchaser and approved by the Contractor's authorized representative and a Government representative. Demilitarization will be accomplished as specified elsewhere in the contract. Component parts essential to the military or lethal purpose of the item shall be rendered unusable as prescribed herein. The Purchaser agrees to assume all costs incident to the demilitarization.

(iv) *Failure to demilitarize.* If the Purchaser fails to demilitarize the property being sold herein in accordance with the terms of the contract, the Contractor may, at the Contractor's option and upon ten (10) days written notice (calculated from date of mailing) to the Purchaser:

(A) Repossess the property, complete the demilitarization thereof, and return the property to the Purchaser. The Purchaser hereby agrees to pay to the Contractor prior to the return of the property to the Purchaser all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property to the Purchaser.

(B) Repossess the property, complete the demilitarization thereof, resell the property, and charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the excess costs incurred by the Contractor in repossessing, demilitarizing, and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(C) Repossess the property and resell it under similar terms and conditions. In the event this option is exercised, the Contractor shall charge the defaulting Purchaser with all excess costs occasioned the Contractor thereby. The Contractor shall deduct these excess costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the cost to the Contractor of repossessing and reselling the property exceed the purchase price, the defaulting Purchaser hereby agrees to pay these excess costs to the Contractor.

(2) *Performance bond.* When work, other than loading, is to be performed by the purchaser and it is considered necessary to insure performance by the purchaser, a performance bond shall be required. Generally, the amount of each performance bond shall be 100% of the estimated cost of the work to be performed. If a requirement for a 100% performance bond would be disadvantageous to the contractor or to the Government, the amount may be reduced to not less than 50% of the estimated cost of the work to be performed. The execution of a performance bond in a specified amount shall be required, as follows:

Performance bond. Within ten (10) days after notice of award, the Purchaser shall furnish a performance bond in the sum of $____ to cover the Purchaser's obligations and undertakings herein. Such bond shall remain in full force and effect during the term of the contract and any extensions as may be agreed upon. The Purchaser shall not be permitted to begin performance until such time as the bond has been received.

(3) *Liability and insurance.* The following shall be required when the work to be performed by the purchaser warrants a special condition of sale:

Liability and insurance. The Purchaser shall at the Purchaser's own expense purchase and maintain during the term of the contract insurance as follows:

(i) Standard workers' compensation and employer's liability insurance such as may be proper under State and Federal statutes. However, upon receipt of satisfactory evidence that the Purchaser is qualified as a self-insurer under applicable provisions of law, the Contractor may waive this requirement.

(ii) Bodily injury liability insurance in the amount of not less than $300,000 any one occurrence.

(c) Property damage liability insurance including any and all property, whether or not in the care, custody, or control of the Purchaser.

(4) *Dangerous property.* A warning of potential danger shall be included in all cases when it cannot be certified that the property is completely innocuous. The following condition shall be used for this purpose:

Dangerous property. Purchasers are warned that the property purchased may contain items of an explosive, toxic, or inflammable nature, notwithstanding reasonable care exercised by the Contractor to render the property harmless. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person, arising from or incident to the purchase of the property, or its use or disposition by the Purchaser. The Purchaser shall save the Contractor and the Government harmless from any and all such claims.

(5) *Controlled substances.* The sale of any controlled substance, e.g., narcotics, stimulants, depressants, hallucinogenic drugs, shall be subject to the following special conditions:

Controlled substances. Bids will be rejected unless the Bidder submits the following certification with its bid: "The undersigned represents and warrants that it is registered under The Comprehensive Drug Abuse Prevention and Control Act of 1970, and is authorized under the law and by the Attorney General, U.S. Department of Justice (Bureau of Narcotics and Dangerous Drugs) to buy controlled substances either as a medical practitioner, dealer or manufacturer of controlled substances."

Narcotic drugs and chemicals. Bids will be rejected unless the Bidder submits the following certification with its bid: "The undersigned represents and warrants that it is registered under Federal narcotics laws and is authorized by law and by the Bureau of Narcotics, United States Treasury Department, as a manufacturer of narcotics."

(6) *Radioactive material.* The following condition shall be used whenever there is the possibility that the property offered for sale is capable of emitting ionized radiation:

Radioactive material. Purchasers are warned that the property may be capable of emitting ionized radiation in varying degrees. The Contractor and the Government assume no liability for damage to the property of the Purchaser, or for personal injuries or disabilities to the Purchaser or the Purchaser's employees, or to any other person arising from or incident to the purchase of the property or its use or disposition by the Purchaser. The Purchaser shall hold the Contractor and the Government harmless from any and all such claims. As a safety precaution, the Purchaser should warn future possessors or users of the property that it may be capable of emitting ionized radiation.

(7) *Scrap warranty.* The following condition shall be used whenever property, other than production scrap, is offered for sale as scrap:

Scrap warranty. The Purchaser represents and warrants that the property will be used only as scrap, in its existing condition or after further preparation, and will not be resold until (a) scrapping has been accomplished, or (b) the Purchaser obtains an identical warranty from any subsequent purchaser.

(8) *Antitrust clearance.* When a sales offering include property with an acquisition cost of $3,000,000 or more, the following condition shall be included:

Antitrust. To comply with section 207 of the Federal Property and Administrative

Services Act of 1949, as amended, when property offered for sale has an acquisition cost of $3,000,000 or more, or when the property consists of patents, processes, techniques, or inventions, irrespective of cost, the successful Bidder shall be required to furnish additional information and shall allow up to sixty (60) days for acceptance of its bid. Award shall be made only upon advice from the Department of Justice that the proposed sale would not tend to create or maintain a situation inconsistent with the antitrust laws.

(c) The following special conditions of sale may be added at the option of the contractor:

(1) *Sales and use tax liability.* If the purchase of the property is subject to a state sales or use tax, a special condition of sale shall be included stipulating that the Purchaser shall pay and the Contractor shall collect the amount of the tax, which shall be itemized separately on the billing document.

(2) *Safety, security, and fire regulations.*

(3) *Bid deposits.*

(4) *Other special conditions.* All other special conditions of sale considered necessary by the Contractor shall be subject to the prior approval of the plant clearance officer. Approval shall be granted, *provided,* the prescribed conditions of sale are not altered or affected thereby and the interest of the Government is not adversely affected.

[51 FR 46299, Dec. 23, 1986, as amended at 52 FR 34789, Sept. 15, 1987]

245.7102-7 Standard Form 1424.

Inventory Disposal Report shall be prepared for each completed plant clearance case. These reports shall be distributed to the appropriate contracting officer and to the referring activity when a case is forwarded to another activity for plant clearance actions. The primary plant clearance officer shall be responsible for preparing and distributing a consolidated Inventory Disposal Report for termination inventory that forms the basis for a claim against the Government. Consolidated reports will be provided for each termination docket number. All items on the form are self-explanatory, except as follows:

(a) *Item 11.* Insert total acquisition cost of inventory reported for plant clearance purposes.

(b) *Item 12.* Insert net increase or decrease due to shortages, overages, errors, pricing or withdrawals, etc. Explain in Item 26, "Remarks".

(c) *Item 14.* Insert amount which contractor in possession is retaining or withdrawing at full acquisition cost after the plant clearance case was opened (see FAR 45.605-1).

(d) *Item 15.* Insert full acquisition cost in appropriate column, and in "Proceeds" column insert the acquisition cost less approved handling, transportation, and restocking charges (see FAR 45.605-2).

(e) *Item 16.* Insert the total acquisition cost for all transfers accomplished. For line 16A, insert subtotals representing the value of redistributions within the agency to which the inventory was contractually accountable, i.e., assets accountable to a NASA contract that are retained by NASA. For line 16B, insert subtotals for redistributions to agencies other than the agency to which the assets were contractually accountable.

(f) *Item 18.* Insert acquisition cost and gross proceeds. Where approved costs of sale are reimbursed from proceeds, net proceeds shall be identified under "Remarks".

(g) *Item 19.* Insert acquisition cost of inventory sold by the contractor with proceeds applied as a credit to overhead.

(h) *Items 20 and 21.* May be used to report transactions not otherwise identified such as assets shipped to a Government precious metals reclamation activity, etc. Insert the type of transaction and provide further explanation in "Remarks", if necessary.

(i) *Item 25.* Line items and acquisition cost must equal line 13 and must account for all disposal actions within the case.

(j) *Item 26.* Explain all entries in Item 12. Show specific disposition of proceeds reported in Items 14, 15, and 18. Indicate contract number and posting reference to which proceeds were applied and verified, amounts deleted for specific contractor claims, or applied as a credit to the claim. If payment was made to the Government, indicate disbursing office where proceeds were deposited. Explain any unusual entries requiring explanation.

[53 FR 38183, Sept. 29, 1988]

PART 246—QUALITY ASSURANCE

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46313, Dec. 23, 1986, unless otherwise noted.

Subpart 246.1—General

246.101 Definitions.

Calibration, is the comparison of a measurement system or device of unverified accuracy to a measurement system or device of known or greater accuracy to detect and correct any variation from required performance specification of the unverified measurement system or device.

Metrology, is the science of weights and measures used to determine conformance to technical requirements including the development of standards and systems for absolute and relative measurements.

Quality, means the composite of material attributes including performance features and characteristics of a product or service to satisfy a given need.

Quality Assurance, is a planned and systematic pattern of all actions necessary to provide adequate confidence that adequate technical requirements are established; products and services conform to established technical requirements; and satisfactory performance is achieved.

Quality Audit, is a systematic examination of the acts and decisions with respect to quality in order to independently verify or evaluate the operational requirements of the Quality program or the specification or contract requirements of the product or service.

Quality Program, is a program which is developed, planned, and managed to carry out cost effectively all efforts to effect the quality of materials and services from concept through validation, full-scale development, production, deployment, and disposal.

246.102 Policy.

(S-70) The Departments shall develop and manage a cost effective quality program to assure that all services provided and products designed, developed, purchased, produced, stored, distributed, operated, maintained, or disposed of, by contractors for the Department of Defense, conform to specified requirements.

(S-71) The Departments will plan and implement a quality program as an integral part of all phases of the acquisition and support process, and will conduct quality audits to assure the attainment of quality products and services.

(S-72) The Government shall determine the type and extent of Government contract quality assurance actions required, based upon the particular acquisition.

(1) These actions may include:

(i) Inspection of supplies and services;

(ii) Review of the contractor's inspection system, quality program, or other means employed by the contractor to control quality and to comply with contract requirements;

(iii) Maintenance of Government records to reflect actions, deficiencies, and corrective measures; and

(iv) Review and evaluation of quality data, including reports from the user, to initiate required corrective actions or to adjust Government contract quality assurance actions.

(2) The Government shall hold contractors responsible for the quality of products and services by means of:

(i) Contract provisions that place responsibility on contractors;

(ii) The Government's exercising its right to reject or return contractor-responsible defective items for repair, correction or replacement; and

(iii) Warranty clauses, when appropriate.

(3) The Government shall consider the use of:

(i) Contractual means for encouraging excellence in the conduct of contractor-responsible quality efforts;

(ii) Incentive fee or award fee arrangements for achieving quality goals;

(iii) Reduced Government surveillance when contractor's quality performance so indicates; and

(iv) Other noncontractual motivation techniques.

(4) Contractors shall be provided maximum flexibility in establishing efficient and effective quality programs within specified contractual requirements.

246.103 Contracting office responsibilities.

The contracting office may conduct, in conjunction, where necessary, with the activity responsible for technical requirements, product-oriented surveys and evaluations to determine the adequacy of the technical requirements relating to quality and product conformance to design intent. The contracting office may arrange with the contract administration office to participate in pre-award surveys, post-award, and preproduction conferences, and first article testing. The contracting office may aid the contract administration office in the transition from research and development to production, aid the technical activity in improving the quality requirements in contracts when first designed for competitive acquisition, and aid in ascertaining the source of difficulties associated with user experience reports.

246.104 Contract administration office responsibilities.

(d) Written instructions from the contracting office shall be continued as prescribed until any recommendation has been acted upon by the contracting office (also see FAR 46.103(c)).

246.170 Organization responsible for technical requirements.

(a) The activity responsible for technical requirements (e.g., specifications, drawings and standards) is responsible for prescribing inspection, testing, or other contract quality requirements that are essential to assure the integrity of products and services.

(b) To the extent feasible, alternative but substantially equivalent inspection methods shall be provided in order to obtain wide competition and low cost. Contractor-recommended alternatives may be authorized when in the interest of the Government and after approval by the activity responsible for technical requirements.

(c) The activity responsible for technical requirements may also prepare instructions regarding the type and extent of Government inspections pertaining to contracts for specific supplies or services that are complex or for which unusual requirements have been established. Such instructions shall be kept to a minimum taking into account the policy contained in 246.474(b). Normally, issuance of these instructions will not be appropriate for standard commercial items except when items having critical characteristics are being purchased. After issuance of these instructions, production problems, product-oriented visits, user experience and input from the contract administration office shall be analyzed periodically to determine whether conditions warrant a change in type and extent of the inspection requirements. Such analysis may result in decreasing or increasing Government inspection. These instructions shall be prepared on a contract-by-contract basis and shall not be issued·

(1) As a substitute for incomplete contract quality requirements;

(2) Where the contract does not impose equal or greater inspection requirements on the contractor;

(3) Encompassing broad or general designations such as "all requirements", "all characteristics", or "all characteristics in the classification of defects";

(4) On routine administrative procedures; or

(5) Specifying continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(d) In the preparation of such instructions, the technical activity shall consider, to the extent available and applicable, such factors as:

(1) The past quality history of the contractor;

(2) The criticality of the material acquired in relation to its ultimate use considering such factors as reliability, safety and interchangeability;

(3) Problems encountered in the development of the product;

(4) Problems encountered in the acquisition of the same or similar material;

(5) Previously generated feedback data from receiving, testing or using activities; and

(6) Other contractor's experience in overcoming manufacturing problems.

When knowledge of the determining factors, which resulted in the requirement for Government inspection, would be useful to the contract administration office in performing the contract quality assurance function, these factors should be provided to the contract administration office.

Subpart 246.2—Contract Quality Requirements

246.202 Types of contract quality requirements.

246.202-3 Higher-level contract quality requirements.

(S-70) Inspection System Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain an inspection system in accordance with a Government specification. This requirement shall be referenced in contracts when technical requirements are such as to require control of quality by in-process as well as final end-item inspection, including control of such elements of the manufacturing process as measuring and testing equipment, drawings and changes, inspection, documentation and records. The objectives and essential elements of an inspection system are prescribed in MIL-I-45208, which shall be referenced in contracts when an inspection system requirement has been established.

(S-71) Quality Program Requirement is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain a quality program in accordance with a Government specification. Such a requirement shall be established when the technical requirements of the contract are such as to require control of work operations, in-process controls, and inspection, as well as attention to other factors (e.g., organizations, planning, work instructions, documentation control, advanced metrology). The objectives and essential elements of a quality program are prescribed in MIL-Q-9858 which shall be referenced in contracts when a quality program requirement has been established.

246.203 Criteria for use of contract quality requirements.

(e) *Criticality.* Whether peculiar or common, purchases of critical items must have contract quality requirements.

246.204 Application of criteria.

For DoD the following table implements FAR 46.204, Table 46-1, for higher-level contract quality requirements:

TABLE 46-1—CONTRACT QUALITY REQUIREMENTS GUIDE

Item		Type of contract	
Technical description	Complexity	Application	Quality requirement
Commercial	Complex	Critical	MIL-I-45208
Military-Federal	Non-complex	Critical	MIL-I-45208
Military-Federal	Complex	Non-critical peculiar	MIL-I-45208
Military-Federal	Complex	Critical	MIL-Q-9858

Subpart 246.3—Contract Clauses

246.370 Material inspection and receiving report.

The contracting officer shall insert the clause at 252.246-7000, Material Inspection and Receiving Report, in solicitations and contracts when delivery of a separate and distinct object or entity, whether separately priced or not, is anticipated. However, when contract administration is retained by the contracting office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(a) Contracts effected under FAR part 13;

(b) Negotiated subsistence contracts;

(c) Contracts for fresh milk and related fresh dairy products;

(d) Contracts for which the end item is a scientific or technical report;

(e) Research and development contracts not requiring the delivery of separately priced end items;

(f) Base, post, camp or station contracts;

(g) In overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting office shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and,

(h) Contracts for services when hardware is not acquired as an item in the contract, e.g., level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central contracting offices which authorize only base, post, camp or station activities to issue orders, provided that such contracts and orders are not assigned for administration.

Subpart 246.4—Government Contract Quality Assurance

246.405 Subcontracts.

Selective evaluation of the contractor's control of subcontractors may be requested by the contract administration office responsible for the contract in order to provide that office with additional assurance that supplies being received from subcontractors conform to quality requirements. Communications between contract administration offices concerning contract quality assurance actions to be performed shall be through Government channels. Requests for selective evaluation shall indicate Government contract quality actions to be performed, e.g., specific characteristics, processes and procedures to be verified, tests to be witnessed, and records, reports, and certificates to be evaluated.

246.406 Foreign governments.

(S-70) *FMS requirements.* If a contractor's purchase order or subcontract includes FMS requirements and "quality assurance only" is requested at source, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

(S-71) *Quality assurance among NATO countries.*

(1) NATO Standardization Agreement (STANAG) 4107, Mutual Acceptance of Government Quality Assurance sets forth procedures, terms and conditions under which mutual government quality assurance of military material and services is to be performed by the national authority of one NATO country on request of another NATO country, or a NATO organization. This agreement, with certain reservations, has been ratified by the United States and other nations in the North Atlantic Treaty Organization. The Military Departments may request NATO countries to perform quality assurance in accordance with STANAG 4107. Military Departments will also perform quality assurance in accordance with STANAG 4107 when requested by a NATO country. As a reservation to STANAG 4107, the U.S. Government reserves the right to require reimbursement for work performed for other NATO countries and organizations. 242.101(d) applies.

(2) NATO Standardization Agreement (STANAG) 4108, Allied Quality Assurance Publications, provides for the application of Allied Quality Assurance Publications (AQAP's). Its annexes furnish a list of AQAP's and the criteria for the application of those AQAP's which are contractually required in contracts between NATO countries.

(S-72) *International military sales (non-NATO).* Department of Defense components shall:

(1) Perform quality assurance (QA) services on international military sales contracts or in accordance with existing agreements;

(2) Assure conformance to technical and quality requirements of international military sales contracts;

(3) Keep Government personnel and contractors informed on the use of QA publications; and,

(4) Specify appropriate quality requirements in contracts awarded to other countries, and delegate QA services to the host government whenever satisfactory services are available, as appropriate.

(S-73) *Quality Assurance Agreement with Australia.* (See also 225.7310(d) and appendix T-101.1.)

(1) Requests for quality assurance services in Australia shall be directed to:

Department of Defence
P.O. Box E33
Queen Victoria Terrace
Parkes, ACT 2600
ATTN: QAERP (CP4-3-46)

(2) Requests for quality assurance services in the United States shall be directed to:

Department of Defense Central Control Point
DCASR, New York, 201 Varrick Street
New York, NY 10014

246.470 Quality assurance by other agencies.

Under Pub. L. 85-726 (72 Stat. 776, 49 U.S.C. 1423), the Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with the issuance and continuation of various certificates applicable to the design, manufacture, and airworthiness criteria of certain types of commercial aircraft and of aircraft equipment and accessories. The FAA evaluations are not a substitute for normal Department of Defense evaluations of the contractor's quality assurance measures. Actual records of such FAA evaluations may be of benefit, however, and should be utilized to maximum advantage by the contract administration office. That office is responsible for assuring that the supplies and services conform to the terms of the contract and that any required certificates and approvals are in the possession of the contractor prior to acceptance.

246.471 Contract administration of special commodities.

246.471-1 Subsistence.

(a) Any Federal activity capable of assuring wholesomeness and quality in food, including medical service personnel of the Military Departments, may be designated by the contracting office to perform Government contract quality assurance actions on a reimbursable basis when appropriate, for subsistence contract items.

(b) The following is an explanation of particular terms used in this section:

(1) Subsistence—food for, and provisions to be used in, feeding of personnel and animals;

(2) Medical Service Personnel—officers and enlisted personnel of the Medical Services of the Departments of the Army, Navy, and Air Force designated to perform the required inspections of subsistence;

(3) Wholesomeness of Food—that characteristic possessed by a food product which promotes good health and well being in the consumer; and

(4) Quality of Food—the required elements or characteristics stated in the specification or other contractual document which the food must possess to comply with the desired degree of excellence exclusive of those characteristics required to assure wholesomeness.

(c) The Surgeons General of the Military Departments are responsible for the acceptance criteria, technical requirements, and inspection procedures needed to assure wholesomeness of foods. Wholesomeness assurance measures will include but not be limited to:

(1) Establishment of standards of tolerances to evaluate wholesomeness.

(2) Inspection of sources for sanitation including sources of component items when required;

(3) Approval of manufacturing processes to assure wholesomeness is incorporated and used; and

(4) Use of test and examination techniques during processing or for the finished item to detect unsanitary practices or unwholesome food.

(d) Maximum utilization shall be made of existing inspection and grading services of other Federal agencies to perform contract quality assurance actions in processing plants economically and efficiently. However, an adequate Government contract quality assurance workload shall be retained for training of medical service personnel and to provide a base for rotation of personnel between the continental United States and overseas.

246.471-2 Petroleum.

The contract administration office may authorize the release of petroleum supplies without requiring the signing or stamping of shipping papers by a representative of the contract administration office, if the alternative procedures of 246.473(b) are used. In that event on petroleum servicing contracts for receiving, storing, and issuing Government-owned petroleum products, the contractor shall be required to type or stamp and to sign the following statement on each copy of the shipping papers:

> I certify that the above supplies were (a) in the quality indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 246.471-2 of the DoD FAR Supplement under authorization of (Name and title of the authorized representative of the Contract Administration Office) in a letter dated (Date of authorizing letter).
>
> (Signature and Title of Contractor's designated official)

246.471-3 Construction projects.

(a) On-site inspection of buildings and other structures is normally performed by the Military Department responsible for their construction.

(b) Government contract quality assurance actions for construction materials and supplies acquired for military and civil works projects shall be performed by the contract administration office in accordance with this section.

(c) The functions in (a) and (b) above will be performed so as to assure compatibility of buildings and structures and installed equipment.

246.472 Inspection stamping.

(a) There is one Department of Defense inspection approval marking design for identification of material which has been inspected for conformance to only a portion of the contract quality requirements, and another for material which has been completely inspected for all contract quality requirements at source. The designs and their uses are as follows:

(1) *Partial (circle) inspection approval stamp.* This stamp is circular and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has been subjected to only a portion of the contract quality requirements applicable to the material at the time and place of Government contract quality assurance. Partial inspection approval stamping shall identify, for Government personnel, material which complies with all contract quality requirements applicable at the time and place of Government contract quality assurance, excepting those listed as uninspected on the associated Material Inspection and Receiving Report (DD Form 250), packing list, or comparable document.

(2) *Complete (square) inspection approval stamp.* This stamp is square and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has satisfied all contract quality requirements. Complete inspection approval stamping shall identify, for Government personnel, material which is in complete conformance with all contract quality requirements applicable to the material at the time and place of inspection. Complete inspection approval establishes that material which once was partially approved has subsequently received complete approval. One imprint of the square stamp will void multiple imprints of the circle stamp.

(b) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or lot routing tickets adequately serves to provide the necessary indication status and to control or facilitate the movement of material. No material shall be stamped in such a way as to damage the material.

(c) The placing of a Department of Defense Inspection Approval Stamp upon material does not mean that the material has been accepted by the Government. Acceptance is ordinarily evidenced by execution of the acceptance certificate on the applicable inspection and receiving report.

(d) NASA Publications include detailed policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) Quality Status Stamps. When requested by NASA Centers, the Government representative shall use NASA Quality Status Stamps and apply the procedures of current NASA requirements for all NASA delegations.

246.473 Authorizing shipment of supplies.

(a) *General.* Ordinarily, a representative of the contract administration office shall sign or stamp the shipping papers accompanying Government source-inspected supplies of both prime contracts and subcontracts to release them for shipment. In accordance with the criteria in 246.473(b), however, an alternative procedure may be used in which the contractor assumes the responsibility for the release for shipment of such supplies inspected at the contractor's or subcontractor's facilities, just as the contractor may be given the authority for other functions pertaining to the control of quality. When this alternative procedure is used, it will release Department of Defense manpower for technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

(b) *Alternative procedures—contractor release for shipment.* (1) The contract administration office may give the contractor authorization in writing to release supplies for shipment when:

(i) The stamping or signing of the shipping papers by a representative of the contract administration office impairs the operation of a planned Government contract quality assurance program or places an unreasonable demand on the Government representative's time; and

(ii) There is sufficient continuity of production to permit the establishment of a systematic and continuing Government evaluation of the contractor's control of quality; and

(iii) The contractor has a record of satisfactory product quality including quality pertaining to preparation for shipment.

(2) When there is an indication that the conditions in (b)(1) (i) (ii) or (iii) above no longer prevail, the authorization shall be withdrawn in writing.

(3) When the alternative procedure is used, the contractor shall:

(i) Type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s) or on an attachment thereto:

> The supplies comprising this shipment have been subjected to and have passed all examinations and tests required by the contract, were shipped in accordance with authorized shipping instructions, and conform to the quality, identity and condition called for in contractual requirements and to the quantity shown on this document. This shipment was released in accordance with paragraph 246.473 of the DoD FAR Supplement for authorizing Shipment of Supplies under authorization of (Name and Title of the authorized representative of the Contract Administration Office) in a letter dated (Date of authorizing letter).
>
> (Signature and Title of Contractor's designated official), and

(ii) Release and process, in accordance with established instructions, the DD Form 250 (Material Inspection and Receiving Report) or any other receiving report authorized by this Supplement.

246.474 Government contract quality assurance actions.

(a) *Planning.* (1) Government contract quality assurance actions to determine a contractor's compliance with contract quality requirements shall be systematically planned, taking into consideration the relative importance of the product and the variety of tasks required of the available resources. Systematic planning shall include:

(i) Review and analysis of pre-award surveys, post-award conferences, technical data packages, and first article approvals;

(ii) Identification of the specific products, processes and procedures to be subjected to Government contract quality assurance as well as the specific characteristics of such products, processes, or procedures to be verified (in the absence of identification of specific characteristics by the purchasing office, those established by the contractor will be used to the maximum extent possible);

(iii) Provisions for effective distribution and utilization of the Government's efforts and resources between inspection of products and inspection of the contractor's methods of regulating quality; and provisions for keeping and using records.

(2) Planning to determine the extent of Government contract quality assurance actions shall include as a minimum:

(i) Possible effect of failure on health or safety of personnel, or on associated or related equipment;

(ii) Tactical, strategic, or technical importance;

(iii) Complexity and the need for required reliability;

(iv) Pertinency, completeness, and reliability of the contractor's quality records;

(v) Previous quality history of the contractor; and

(vi) Unit cost.

(b) *Implementation.* (1) Determination of conformance to contract quality requirements shall be made on the basis of objective evidence of quality. In determining the acceptability of supplies or services, the contract administration office shall make optimum use of quality data generated by contractors. To the extent that contractor quality data are available and reliable, as determined by the contract administration office, such data shall be used to adjust the amount of Government contract quality assurance to a minimum consistent with proper assurance that the supplies or services accepted conform to contract quality requirements.

(2) When the contract requires the contractor to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests, or other factors contributing to high-testing costs, the tests shall be coordinated between the contractor and the Government to the maximum extent practicable to avoid the need for later independent Government examination and testing.

(3) The following basic actions shall be taken to determine the contractor's compliance with the contract quality requirements:

(i) Review and evaluation of the contractor's inspection procedures;

(ii) Review and evaluation of the contractor's selection, calibration, maintenance, and use of gauges and measuring and test equipment;

(iii) Review and evaluation of the contractor's quality records; and

(iv) Performance of product verification inspection by the Government.

(4) Because of configuration, innumerable design characteristics, and life and reliability requirements, the quality of complex supplies and equipment cannot be adequately evaluated by inspection only; such supplies and equipment must be produced under regulated conditions if adequate assurance of product quality is to be realized. Systematic control of manufacturing processes by the producer is an essential prerequisite for assuring the quality of such items. It is also essential that the Government verify systematically that such control is, in fact, established and maintained by contractors.

(5) The Government, under the Inspection clause at FAR 52.246-2, reserves the right to charge to the contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test are requested by the contractor or when reinspection or retest is necessitated by prior rejection. When a contract contains this clause, a record shall be maintained of the additional cost occasioned the Government by the delay, reinspection or retest. Such record shall include a description of any delay, the reasons for any reinspection or retest, and a statement of the hours spent by the Government, including wait time, as well as the cost of any applicable travel and transportation. When the Quality Assurance Representative (QAR) considers that the circumstances warrant the assessment of the additional costs occasioned the Government by the delay, reinspection or retest, the QAR shall forward the QAR's recommendation together with the record of additional costs to the contracting officer. If the contracting officer determines that such additional costs should be charged to the contractor, the contracting officer shall notify the contractor, in writing, of the contracting officer's determination to exercise the Government's right under the Inspection clause and demand payment of such costs in accordance with the collection procedures established under FAR subpart 32.6. In arriving at any such recommendation and determination, consideration should be given to the frequency of such delay, reinspection or retest under both current and prior contracts; the cause of such delay, reinspection or retest; and the expense of recovering the additional costs. Charges for such delay, reinspection or retest normally should not be assessed when such delay, reinspection or retest occurs only occasionally, or results from causes beyond the contractor's control, or when the expense of recovery outweighs the costs to be recovered. Costs shall be determined at the standard DoD reimbursable rate in effect at the time of the delay, reinspection or retest.

(c) *Maintenance of government records.* Suitable records shall be maintained by the contract administration office as part of the performance records of contractors in order to reflect:

(1) The nature of all Government contract quality assurance actions, including when appropriate the number of observations made and the number and type of deficiencies;

(2) Decisions regarding the acceptability of the products, the processes, and the requirements, together with action taken to correct deficiencies; and,

(3) Distribution of Government contract quality assurance effort.

(d) *Quality evaluation data.* The contract administration office shall establish a system providing as a minimum for the collection, evaluation and use of quality data developed by the contractor during manufacture and by the Government through contract quality assurance actions and reports by users during initial use phase, where available. The objectives of the system are to:

(1) Provide a foundation of technical actions aimed at maintaining and making needed improvements in the quality characteristics of both current and future products (subject to military requirements and cost considerations);

(2) Upgrade the methods and practices used to assure quality during manufacture, delivery, and use of the item;

(3) Provide a basis for managerial decisions relative to the allocation of Government contract quality assurance resources among different products and activities; and

(4) Determine production source capabilities as measured by product quality.

Subpart 246.6—Material Inspection and Receiving Reports

246.670 General.

Appendix I, Material Inspection and Receiving Report, contains procedures and instructions for the use, preparation, and distribution of the Material Inspection and Receiving Report (MIRR) (DD Forms 250 Series) and suppliers commercial shipping/packing lists used to evidence Government contract quality assurance (see FAR 46.401).

246.671 Policy.

(a) Material Inspection and Receiving Reports (MIRRs) are used to document contract quality assurance, acceptance of supplies and services, and shipments. They are used by receiving, status control, technical, contracting, inventory control, requisitioning, and paying activities. MIRRs shall not be used for:

(1) Shipments by subcontractors where direct shipment is not made to the Government; or

(2) Shipment of contractor inventory.

(b) The provisions of appendix I are applicable to supplies or services acquired by the Department of Defense (DoD) when the Material Inspection and Receiving Report clause (see 252.246-7000) is included in the contract (see 246.370).

(c) When the Department of Defense provides contract quality assurance and/or acceptance services for non-DoD activities, the MIRR shall be prepared in accordance with appendix I unless otherwise specified in the contract.

Subpart 246.7—Warranties

246.701 Definitions.

Acceptance, as used in this subpart and in the warranty clauses at FAR 52.246-17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246-18, Warranty of Supplies of a Complex Nature; FAR 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria; and FAR 52.246-20, Warranty of Services; means the execution of an official document (e.g., DD Form 250) by an authorized representative of the Government. The above clauses shall be modified accordingly in DoD contracts.

Defects, as used in this subpart, means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

246.702 General.

(d) Planning is an essential step in obtaining an effective warranty. To be effective, warranties should be implemented as an integral part of an overall design, development, test and production program.

(e) The acquisition cost of a warranty may be included as part of an item's price or may be set forth as a separate contract line item.

(f) Agencies shall establish procedures to track and accumulate data relative to warranty costs.

246.703 Criteria for use of warranties.

The use of warranties in the procurement of weapon systems is mandatory pursuant to 10 U.S.C. 2403; unless a waiver is authorized. Policy and procedures for obtaining such warranties or waivers are contained in 246.770. Acquisition of warranties in the procurement of supplies that do not meet the definition of a weapon system (e.g., spare, repair, or replenishment parts) is governed by FAR 46.7.

246.704 Authority for use of warranties.

In contracts for other than weapon systems, the Chief of the Purchasing Office must approve use of a warranty except for:

(a) Commercial supplies or services (see FAR 46.709);

(b) Technical data, unless the warranty provides for extended liability (see 246.708);

(c) Supplies and services in fixed price type contracts containing quality assurance provisions that reference MIL-I-45208 or MIL-Q-9858; and

(d) Supplies and services in construction contracts when the warranties contained in Federal, military or construction guide specifications applicable to a given construction project are used. Authority for use of warranties in the procurement of weapon systems is stated in 246.770.

246.705 Limitations.

(a) Except for contracts for the production of weapon system under 246.770, contracting officers shall not include warranties in cost-reimbursement contracts, except for those warranties contained in the clauses at FAR 52.246-3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246-8, Inspection of Research and Development—Cost-Reimbursement; and at 252.246-7001, Warranty of Data.

[51 FR 46313, Dec. 23, 1986, as amended at 53 FR 38176, Sept. 29, 1988]

246.706 Warranty terms and conditions.

(b)(5) *Markings.* If items delivered under the contract shall be stamped or marked, it shall be done so in accordance with MIL Standard 129, "Marking for Shipments and Storage" and MIL Standard 130, "Identification Marking of U.S. Military Property."

246.708 Warranties of technical data.

A warranty of technical data should be obtained whenever practicable and cost effective. The contracting officer shall consider the factors contained in FAR 46.703 in deciding whether to provide for warranties of technical data and whether there should be an extended liability provision (see 246.770-10). Particular emphasis should be placed on whether the extended liability is justified by: (i) The likelihood that correction or replacement of the nonconforming data, or a price adjustment in lieu thereof, will not afford adequate protection to the Government; and (ii) the effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

246.710 Contract Clauses.

(f) In accordance with 246.708, the contracting officer may insert a clause substantially the same as the clause at 252.246-7001, Warranty of Data, in solicitations and contracts when a fixed-price or cost-reimbursement contract is contemplated that will require data to be furnished. When this clause is not used, technical data is warranted under the clauses at FAR 52.246-3, Inspection of Supplies—Cost-Reimbursement; FAR 52.246-6, Inspection-Time-and-Material and Labor Hour, FAR 52.246-8, Inspection of Research and Development—Cost-Reimbursement; and FAR 52.246-19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria.

(1) If extended liability is desired and a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate I.

(2) If extended liability is desired and a firm fixed-price contract is contemplated, the contracting officer may use the clause with its Alternate II.

246.770 Use of warranties in weapon system procurements.

This section sets forth policy and procedures for obtaining, pursuant to 10 U.S.C. 2403, certain warranties from prime contractors when contracting for the production of a weapon system.

246.770-1 Definitions.

At no additional cost to the United States, as used in this section, means at no increase in price for firm fixed price contracts or at no increase in target or ceiling price for fixed price incentive contracts (see also FAR 46.707) or at no increase in estimated cost or fee for cost-reimbursement contracts.

Design and manufacturing requirements, as used in this section, means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the weapon system being produced.

Essential performance requirements, as used in this section, means the operating capabilities and/or maintenance and reliability characteristics of a weapon system that are determined by the Secretary of Defense (or delegated authority) to be necessary for it to fulfill the military requirement for which the system is designed.

Initial production quantity, as used in this section, means the number of units of a weapon system contracted for in the first program year of full-scale production.

Mature full-scale production, as used in this section, means follow-on production of a weapon system after manufacture of the lesser of the initial production quantity or one-tenth of the eventual total production quantity.

Prime contractor, as used in this section, means a party that enters into an agreement directly with the United States to furnish a system or a major subsystem.

Weapon system, as used in this subpart, means a system or major subsystem used directly by the armed forces to carry out combat missions. By way of illustration, the term "weapon system" includes, but is not limited to the following, if intended for use in carrying out combat missions: Tracked and wheeled combat vehicles; self-propelled, towed and fixed guns, howitzers and mortars; helicopters; naval vessels; bomber, fighter, reconnaissance and electronic warfare aircraft; strategic and tactical missiles including launching systems; guided munitions; military surveillance, command, control, and communication systems; military cargo vehicles and aircraft; mines; torpedoes; fire control systems; propulsion systems; electronic warfare systems; and safety and survival systems. This term does not include related support equipment, such as ground-handling equipment, training devices and accessories thereto; or ammunition, unless an effective warranty for the weapon system would require inclusion of such items. This term does not include commercial items sold in substantial quantities to the general public as described at FAR 15.804-3(c).

246.770-2 Policy.

(a) Unless waived under 246.770-9, after 1 January 1985, the Military Departments and Defense Agencies may not enter into a contract for the production of a weapon system with a unit weapon system cost of more than $100,000 or for which the eventual total procurement cost is in excess of $10,000,000, unless:

(1) A prime contractor for the weapon system provides the United States with written warranties that—

(i) The weapon systems provided under the contract conform to the design and manufacturing requirements specifically delineated in the contract (or any modification to that contract),

(ii) The weapon systems provided under the contract are free from all defects in materials and workmanship at the time of acceptance or delivery as specified in the contract; and

(iii) The weapon systems, if manufactured in mature full-scale production, conform to the essential performance requirements as specifically delineated in the contract (or any modification to that contract);

(2) The contract terms provide that, in the event the weapon system fails

to meet the terms of the above warranties, the contracting officer may—

(i) Require the contractor to promptly take such corrective action as necessary (e.g., repair, replace and/or redesign) at no additional cost to the United States,

(ii) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action, or

(iii) Equitably reduce the contract price.

(b) Contracting officers may require warranties that provide greater coverage and remedies than specified above, such as including an essential performance requirements warranty in other than a mature full-scale production contract.

(c) When essential performance requirements are warranted, the warranty shall specifically identify redesign as a remedy available to the Government.

(1) The period during which redesign shall be available as a remedy shall not terminate before operational use, operational testing, or a combination of operational use and operational testing has demonstrated that the warranted item's design has satisfied the essential performance requirements.

(2) When essential performance requirements are warranted in contracts with alternate source contractors, redesign shall not be included as a remedy available to the Government under those contracts until an alternate source has manufactured the first ten percent of the eventual total production quantity anticipated to be acquired from that alternate source contractor (See 246.770-6).

[51 FR 46313, Dec. 23, 1986, as amended at 55 FR 19080, May 8, 1990]

246.770-3 Tailoring warranty terms and conditions.

As the objectives and circumstances vary considerably among weapon system acquisition programs, Contracting officers shall appropriately tailor the required warranties on a case-by-case basis, including remedies, exclusions, limitations and duration; provided such are consistent with the specific requirements of this section (see also FAR 46.706). The duration specified in any warranty should be clearly related to the contract requirements and allow sufficient time to demonstrate achievement of the requirements after acceptance. Contracting officers may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties. All subsystems and components will be procured in such a manner so as not to invalidate the weapon system warranty. Contracting officers are encouraged to structure broader and more comprehensive warranties where such are advantageous and in accordance with agency policy. Likewise, the Contracting officer may narrow the scope of a warranty where such is appropriate (e.g., where it would be inequitable to require a warranty of all essential performance requirements because a contractor had not designed the system). It is Department of Defense policy not to include in warranty clauses any terms that cover contractor liability for loss, damage or injury to third parties.

246.770-4 Establishing essential performance requirements.

The Secretary of Defense or heads of military departments, or delegees, shall designate which features of a weapon system are its essential performance requirements. Essential performance requirements may be subsequently modified, superseded or cancelled by the Secretary of Defense or heads of military departments (or delegees) when such is in the interests of the Government.

246.770-5 Warranties on government-furnished property.

A prime contractor shall not be required to provide the warranties specified in 246.770-2 on any property furnished to that contractor by the United States except for (a) defects in installation, (b) installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property, or (c) modifications made to the property by the prime contractor.

246.770-6 Exemption for alternate source contractor(s).

Agency heads may exempt alternate source contractor(s) from the essential performance warranty requirements of 246.770-2(a)(1)(iii) until that contractor manufactures the first 10% of the eventual total production quantity anticipated to be acquired from that contractor.

246.770-7 Applicability to FMS.

The warranty requirements of 246.770-2 are not mandatory for FMS production contracts. For all weapon systems procured for FMS requirements, the policy of the Department of Defense should be to obtain the same warranties on conformance to design and manufacturing requirements and against defects in materials and workmanship that are obtained for U.S. supplies. DoD will not normally obtain essential performance warranties for FMS purchasers. However, where the cost for the warranty of essential performance requirements cannot be practically separately identified, the foreign purchaser may be provided the same warranty that is obtained on the same equipment purchased for the U.S. If the FMS purchaser expressly requests a performance warranty in the Letter of Acceptance (LOA), the United States will exert its best efforts to obtain the same warranty obtained on U.S. equipment or, if specifically requested by the FMS purchaser, a unique warranty. It is anticipated that the costs for warranties for FMS purchasers may be different from the costs for such warranties for the United States due to such factors as overseas transportation and any tailoring to reflect the unique aspects of the FMS purchaser. Special care must be exercised to ensure that the FMS purchaser shall bear all of the acquisition and administration costs of any warranties obtained.

246.770-8 Cost-benefit analysis.

It is Department of Defense policy to only obtain warranties that are cost effective. If a specific warranty is considered not to be cost effective by the contracting officer, a waiver request shall be initiated under 246.770-9. In assessing the cost effectiveness of a proposed warranty, an analysis must be performed which considers both the quantitative and qualitative costs and benefits of the warranty. Costs include the warranty acquisition, administration, enforcement and user costs, weapon system life cycle costs with and without a warranty, and any costs resulting from limitations imposed by the warranty provisions. Costs incurred during development specifically for the purpose of reducing production warranty risks should also be considered. Similarly, the cost-benefit analysis must also consider logistical/operational benefits expected as a result of the warranty as well as the impact of the additional contractor motivation provided by the warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing similar warranties on similar systems. The analysis should be documented in the contract file.

246.770-9 Waiver and notification procedures.

One or more of the weapon system warranties required by 246.770-2 may be waived if such waiver is in the interests of national defense or if the warranty to be obtained would not be cost-effective. Waivers may be granted by the Secretary of Defense, by the Assistant Secretary of Defense (Acquisition and Logistics) for Defense agencies without the power to redelegate, or by the Secretaries of the Army, Navy and Air Force with the power to redelegate to no lower than an Assistant Secretary of the Military Department. Class waivers may be granted where justified. Waivers may be granted provided the following notifications or reports are made to the Senate and House Committees on Armed Services and on Appropriations:

(a) *Major weapon systems.* With respect to a weapon system that is a major defense acquisition program for the purpose of 10 U.S.C. 2432, before granting a waiver, the waiving official shall notify the aforementioned Committees in writing of an intention to waive one or more of the required warranties. The notice of intent to waive shall include an explanation to the reasons for the waiver and shall ordinarily be given 30 days prior to granting such waiver.

(b) *Other weapon systems.* With respect to weapon systems that are not major defense acquisition programs for the purpose of 10 U.S.C. 2432, waiving officials shall submit an annual report not later than February 1 of each year that lists waivers granted on such programs during the preceding calendar year. This report shall also include an explanation of the reasons for granting each waiver.

(c) *Weapon systems not in mature full-scale production.* Although a waiver is not required, if a production contract for a major weapon system not yet in mature full-scale production will not include a warranty on essential performance requirements, the waiving officials shall nonetheless comply with the notice requirements for major weapon systems.

(d) *Processing waivers, notifications and reports.* Each Department shall issue procedures for processing waivers, notifications, and reports to Congress. At the minimum, these procedures shall specify:

(1) Requests for waiver shall include—

(i) A brief description of the weapon system and its stage of production, e.g., the number of units delivered and anticipated to be delivered and anticipated to be delivered during the life of the program; and

(ii) The specific warranty or warranties required by 246.770-2(a)(1) for which the waiver requested, the duration of the waiver if it is to go beyond the instant contract and rationale for the waiver.

(iii) A description of the warranties or other techniques to be employed to assure acceptable field performance of the weapon system.

(2) Notifications and reports shall include—

(i) A brief description of the weapon system and its stage of production and

(ii) Rationale for not obtaining a warranty.

(3) A written record will be kept of each waiver granted and notification and report made, together with supporting documentation such as a cost-benefit analysis, for use in answering inquiries.

(4) A copy of each notification and report to Congress shall be submitted concurrently to the Assistant Secretary of Defense (Acquisition and Logistics). For class waivers this copy shall be submitted in advance of transmittal to Congress.

[51 FR 46313, Dec. 23, 1986, as amended at 55 FR 19080, May 8, 1990]

246.770-10 Special contract clauses.

(a) In accordance with 246.770, the contracting officer shall insert in solicitations and contracts pertaining to the production of weapon systems a clause that describes the contractor's warranties on the weapon system.

(b) Each clause describing a contractor's warranty shall specifically state whether or not redesign is an available remedy under the warranty (See 246.770-2).

[51 FR 46313, Dec. 23, 1986, as amended at 55 FR 19080, May 8, 1990]

PART 247—TRANSPORTATION

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AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46321, Dec. 23, 1986, unless otherwise noted.

Subpart 247.1—General

247.103 Transportation documentation and audit regulation (TDA).

(b)(2) Appendix V of the MTMR contains the list of carriers and carrier associations that have entered into agreements with MTMC to provide the required transportation under commercial forms and procedures within CONUS.

247.104-3 Cost-reimbursement contracts.

Section 10721 rates are not applicable on Foreign Military Sales (FMS) shipments. However, on stock fund items from a manufacturer to a depot, section 10721 rates do apply, unless it is clear that the quantity in a specific transportation unit will be delivered to an FMS purchaser. When it is known that a portion of the material in a transportation unit will be delivered to an FMS purchaser, that portion will be shipped on a separate bill of lading and section 10721 rates will not apply.

247.104-5 Citations of government rate tenders.

(a) DoD shippers within CONUS use section IX, Chapter 214 of the MTMR for instructions pertaining to commercial bills of lading to be converted to GBLs.

247.105 Transportation assistance.

(b)(1) The term transportation assistance/traffic management advice includes any and all transportation factors, such as freight rates (for evaluation of bids or routing purposes), other transportation costs, transit agreements, time in transit, or port capabilities.

(2) Military Traffic Management Command (MTMC) is responsible for the performance of traffic management functions within CONUS, including the direction, control, and supervision of all functions incident to the effective and economical acquisition and use of freight and passenger transportation services from commercial for-hire transportation companies, including rail, highway, air, inland waterway, coastwide and intercoastal carriers. Therefore, requests for assistance, rates or other cost factors pertaining to transportation matters other than those outlined above should be directed to the appropriate military activity, i.e., the Military Airlift Command (MAC), Military Sealift Command (MSC), or Headquarters of the Military Service sponsoring the cargo (see 247.372).

(3) The locations and geographical areas of jurisdiction of each area headquarters of the MTMC are listed in Chapter 108 of the MTMR.

(4) Requests for assistance, rates or other costs applicable to shipments of bulk petroleum via ocean tanker transportation should be obtained from the Military Sealift Command.

(5) Requests for assistance, rates or other costs applicable for supplies to be shipped between points outside of the continental United States, including Alaska and Hawaii, shall be obtained from the Headquarters of the Military Service which sponsors the cargo. Requests should be directed as follows:

(i) Army: Deputy Chief of Staff for Logistics, Department of the Army, ATTN: DALO-TSP, Washington, DC 20310-0570.

(ii) Navy: Navy Supply Systems Command, Code 05, Washington, DC 20390.

(iii) Air Force: Applicable Overseas Air Force Command.

(iv) Marine Corps: Director, Transportation Division, HQ, U.S. Marine Corps, COS, Washington, DC 20380.

(6) Requests for rates and related costs for the evaluation of bids or proposals shall include the bid opening or proposal due date and the expected date of initial shipment, if established (see 247.373).

[51 FR 46321, Dec. 23, 1986, as amended at 53 FR 38176, Sept. 29, 1988]

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270-1 Scope of section.

Acquisition procedures peculiar to stevedoring are set forth in this subsection. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.270-2 Definition.

Stevedoring is the loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel, or the breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270-3 [Reserved]

247.270-4 Type of contract.

Normally, stevedoring services will be contracted for by means of an indefinite quantity type contract. Contracts for single job stevedoring services may be made when no indefinite quantity contract is available to fulfill the requirements.

247.270-5 Technical provisions.

(a) Since conditions vary at different ports and sometimes within the same port, standard technical provisions covering all phases of stevedoring operations are impractical. If car loading and unloading or other dock and terminal work will be performed under a stevedoring contract, technical provisions appropriate for such dock and terminal work should be added to the contract as separate items of work.

247.270-6 Evaluation of bids and proposals.

(a) *General.* Offerors shall be required to include in their bids and proposals tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions. Schedules of labor-hour rates which apply to services not covered by commodity rates or to work performed under hardship conditions shall also be required.

(b) *Analysis of tonnage or commodity rates.* (1) The price quoted for handling a ton (weight or measurement) of a specified commodity is a commodity rate. This rate is computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in one hour. The gang cost consists of the following:

(i) The total hourly wages paid to the workers in the gang in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port;

(ii) Payments of workmen's compensation, social security taxes, unemployment insurance, taxes, and liability and property damage insurance; and

(iii) General and administrative expenses and profit.

(2) The direct costs shall be verified by the contracting officer. Since the negotiated stevedoring contract is designed to minimize the contractor's risk, the contractor's gang cost should contain no allowance for contingencies and the profit rate should be less than is granted in the usual fixed-price contract. The estimated number of tons of the specified commodity which can be handled in one hour is based on the contractor's experience and should be compared with the records of experience at the required activity. The evaluation of bids and proposals shall include an extension of the quoted commodity rates against the payable tonnage estimated to be handled for each commodity.

247.270-7 Analysis of labor-hour and equipment rental rates.

Labor-hour rates shall be established for every category of labor expected to be necessary to perform services required under the contract. The development of labor-hour rates follows a pattern similar to the method used in arriving at a gang cost. Specifically, it is composed of the basic wage rate of the worker, workmen's compensation, social security taxes, insurance, general and administrative expenses, and profit. The evaluation of bids and proposals shall include an extension of the quoted labor-hour rates against the estimated labor-hour requirements for each artisan classification. Rates for equipment rental shall be extended against estimated equipment hours.

247.270-8 Award of contract.

The award shall be made to the responsible contractor who offers the lowest overall acceptable bid or proposal after evaluating the total estimated cost of tonnage to be moved at commodity rates and estimated cost at labor-hour rates.

247.270-9 Contract clauses.

(a) The contracting officer shall insert the clauses at 252.247-7000, Scope of Contract, and 252.247-7001, Schedule of Rates in solicitations and contracts for stevedoring services, as appropriate to the contracting situation. While these clauses, containing technical provisions, cover most situations adequately, the various provisions may be deleted, added to, modified, or rearranged as necessary to meet local conditions.

(b) The contracting officer shall insert the clause at 252.247-7002, Price Escalation, in sealed bid solicitations and contracts for stevedoring services.

(c) The contracting officer shall insert the clause at 252.247-7003, Revision of Prices, in negotiated solicitations and contracts for stevedoring services.

(d) The contracting officer shall insert the clause at 252.247-7004, Changes, in solicitations and contracts for stevedoring services, in lieu of the clause at FAR 252.243-1—Alternate I.

(e) The contracting officer shall insert the clause at 252.247-7005, Termination, in solicitations or contracts for stevedoring services when it is desired that the contract may be terminated by either party.

(f) The contracting officer shall insert the clause at 252.247-7006, Indefinite Quantities-Fixed Charges, in solicitations and contracts for stevedoring services when the contract will provide for the payment of "Fixed Charges."

(g) The contracting officer shall insert the clause at 252.247-7007, Indefinite Quantities-No Fixed Charges, in solicitations and contracts for stevedoring services when the contract will not provide for the payment of "Fixed Charges."

(h) The contracting officer shall insert the clauses at 252.247-7008, Employees of Contractor; 252.247-7009, Removal of Contractor's Employees; and 252.247-7010, Liability and Insurance, in solicitations and contracts for stevedoring services.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271-1 Scope of section.

Acquisition procedures peculiar to the preparation of personal property for shipment or storage and for the performance of intra-area movement or intra-city movements are set forth in this section. This section, however, does not contain or cross reference all provisions of this regulation applying to service contracts which shall be adhered to where applicable.

247.271-2 Policy.

(a) *Annual contracts.* Services for the preparation of personal property for shipment or storage and for the performance of intra-area movement normally shall be obtained by requirements contracts awarded as a result of sealed bidding. Such contracts shall be on a calendar year basis except for noncontinuous requirements for shorter periods. Award of contracts should be made prior to November 1 of each year.

(b) *Area of performance.* The solicitation shall define clearly each area of performance. One or more areas may be established; but, the number should be held to a minimum consistent with local conditions. Each schedule may provide for the same or different areas of performance. An area shall be determined in accordance with the following general guidelines. It shall be an area using political boundaries, streets, or any other features as lines of demarcation. Determination as to the number of areas thereof shall take into consideration such matters as total volume, size of overall area and isolated areas of high population density which will be serviced. Frequently used terminals will be specifically identified and considered as being included in each area of performance described in the solicitation.

(c) *Use of pre-bid conference.* In accordance with provisions of FAR 14.207, the use of pre-bid conference shall be considered and is encouraged.

(d) *Appropriate post-award orientation of contractors.* Contracting officers will assure that in accordance with FAR 42.503, each successful contractor is provided appropriate post-award orientation.

(e) *Maximum requirements-minimum capability.* The quantities established by the contracting officer in the Estimated Quantities clauses must be realistic. The contracting officer must be assured that the Government's minimum acceptable daily capability will provide for at least the maximum authorized individual weight allowance as prescribed by the Joint Travel Regulations. Extreme caution must be exercised to ensure that the established minimum acceptable daily capability does not preclude the submission of bids by small but otherwise acceptable bidders.

247.271-3 Procedure.

(a) *Single CONUS military installations or activities assigned total multi-service personal property areas of responsibility.* (1) When two or more military installations or activities are assigned personal property responsibilities for a given area, one military activity shall contract for the estimated requirements of all activities in a contiguous area. The activity shall be designated by mutual agreement of the installation commanders concerned.

(2) The Commander, Military Traffic Management Command (MTMC), shall designate the contracting activity when local commanders are unable to reach an agreement as to the activity to be designated.

(b) *Additional services and excess requirements*—(1) *Excess requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures (see FAR Part 13).

(2) *Additional Services.* Additional services include, but are not limited to, hoisting or lowering of articles, waiting time, special packaging, stuffing or unstuffing of seavan containers and other services not specified in the bid items. Additionally, local moves that do not require drayage may be procured by the hourly rate of constructive weight methods. The rate will include packing, movement, inventorying, unpacking, removal of debris and other services necessary for completion of the movement. Each ITO shall determine if local requirements exist for any additional services. At the option of the contracting officer, additional services may be obtained by:

(i) Inclusion as items within the contract; provided, they are not used in the evaluation of bids (see 252.247-7100); and

(ii) Using Small Purchase Procedures (see FAR part 13). Prices for additional services may be predetermined with the contractor or negotiated on a case-by-case basis.

(3) *Ordering of additional services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

(c) *Contract distribution.* In addition to the distribution requirements of FAR subpart 4.2, one copy of each contract will be furnished as follows:

(1) CONUS personal property shipping activities forward to the MTMC Personal Property Office having jurisdiction over the respective activity. These offices are: Commander, Military Traffic Management Command, Eastern Area, ATTN: MTE-PP, Bayonne, New Jersey 07002-5302; and Commander, Military Traffic Management Command, Western Area, ATTN: MTW-PP, Oakland, California 94626-5000.

(2) Personal property shipping activities in the European and Pacific areas forward to the appropriate Military Traffic Management Command Field Office. Other overseas personal property shipping activities forward to the Commander, Military Traffic Management Command, ATTN: MT-PPQ, 5611 Columbia Pike, Falls Church, VA 22041-5050.

[51 FR 46321, Dec. 23, 1986, as amended at 53 FR 38183, Sept. 29, 1988]

247.271-4 Solicitation provisions, schedule formats, and contract clauses.

(a) *Solicitation provisions and schedule formats.* Solicitation provisions and schedules may be revised, as appropriate, if negotiation procedures are employed.

(1) The contracting officer shall insert the provision at 252.247-7100, Evaluation of Bids, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When "additional services" items are added to any schedule, the contracting officer shall insert the provision at Alternate I (also see 247.271-3(b)).

(2) The contracting officer shall insert the provision at 252.247-7101, Award, in solicitations for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement.

(3) The contracting officer shall insert the schedules as provided by the installation transportation office as contained in DoD 4500.34-R, Personal Property Traffic Management Regulation, in solicitations and resulting contracts for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement. When a requirement does not exist for an item or sub-item in a schedule, that item or sub-item number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added. Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than those authorized herein, of schedule format will be processed as a request for deviation in accordance with Subpart 21.4. When it is determined to be in the best interest of the Government to have both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format.

(b) *Contract clauses.* The contracting officer shall insert the clauses set forth below in solicitations and contracts for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement (except see 247.271-3(b)). Overseas commands, except those in Alaska and Hawaii, may modify these clauses when necessary to conform with local practices and country (including political subdivisions thereof) laws and regulations.

(1) 252.247-7103, Scope of contract.

(2) 252.247-7104, Period of contract. When the period of performance is less than a calendar year, the clause shall be modified to show the appropriate beginning and ending. However, the date for the end of the contract period shall not be later than 31 December of the year in which the contract is awarded.

(3) FAR 52.216-18, Ordering. In addition to the designation of each ordering activity, the individuals authorized to place orders for each activity shall be identified by name or position title. When provisions are made for the placement of oral orders in accordance with FAR 16.506(b), required documentation of such oral orders will be in accordance with Departmental instructions.

(4) 252.247-7105, Ordering limitation.

(5) 252.247-7106, Contract areas of performance.

(6) 252.247-7107, Requirements. The contracting officer shall insert the clause at FAR 52.216-21 except that paragraph (f) of the clause shall be deleted and the paragraph (f) at 252.247-7107 shall be inserted in its place.

(7) 252.247-7108, Facilities. Also see FAR 28.3 regarding insurance policies.

(8) 252.247-7109, Dumurrage.

(9) 252.247-7110, Liability.

(10) 252.247-7111, Erroneous Shipments.

(11) 252.247-7112, Subcontracting.

(12) 252.247-7113, Drayage.

(13) 252.247-7114, Additional Services.

(14) FAR 52.247-2, Permits, Authorities, or Franchises.

(15) FAR 52.247-8, Estimated Weight or Quantities Not Guaranteed.

[51 FR 46321, Dec. 23, 1986, as amended at 53 FR 38183, Sept. 29, 1988]

Subpart 247.3—Transportation in Supply Contracts

247.301-3 Using the defense transportation system (DTS).

Contractual documents shall specify that the contractor shall not ship directly to a consolidation or containerization point (CCP) without authorization from the designated contract administration office.

247.305-10 Packing, marking and consignment.

(a)(1) Consignment instructions shall include, as a minimum, the clear text and coded MILSTRIP data as follows:

(i) Code of consignee and clear text identification of consignee and destination as published in the following:

(A) Department of Defense Activity Address Directory (DoDAAD), DoD 4000.25-6-m,

(B) Military Assistance Program Address Directory (MAPAD), DoD 4000.25-8-M, or

(C) Commercial and Government Entity (CAGE) Handbook H4/H8;

(ii) Project code, when applicable;

(iii) Transportation Priority (TP);

(iv) Required Delivery Date (RDD); and

(v) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code. Non-MILSTRIP shipments shall include data similar to (i) through (iv) above and the applicable portion of (v) above, together with the notation "Non-MILSTRIP".

(2) In addition to the data requirements of (i) through (v) of (1) above, amended shipping instructions shall include the following when appropriate:

(i) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(ii) Any other features of the amended instructions not contained in the basic contract.

(b) For contracts assigned for any contract administration function listed in FAR Subpart 42.3 to any office listed in DoD 4105.59-H, DoD Directory of Contract Administration Services Components, such instructions shall include the modification serial number and, if a new line item is created by the issuance of shipping instructions, the new line item number and the existing line item number if affected.

(c) For diversions of petroleum, oil and lubricant (POL) products overseas to new destinations, instructions issued by an office other than that issuing the contract or delivery order and issued by telephone, teletype or telegram are exempted from the requirement to include the modification serial number and the new line item number in such instructions.

(d) See 247.371.

[51 FR 46321, Dec. 23, 1986, as amended at 53 FR 38243, Sept. 29, 1988]

247.305–70 Returnable gas cylinders

The contracting officer shall insert the clause at 252.247-7201, Returnable Gas Cylinders, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders. The contracting officer may modify the 30-day time period specified in the clause to comply with customary commercial practice.

[54 FR 26208, June 22, 1989]

247.306–2 Lowest overall transportation costs.

(a) See 247.105 for information concerning sources for the lowest available freight and related accessorial and incidental charges.

(b) See 247.372 and 247.373.

247.370 DD Form 1384 (1 APR 66), Transportation Control and Movement Document.

Reporting procedures and instructions for this form will be in compliance with DoD Regulation 4500.32-R, MILSTAMP.

247.371 Standard Form 30, Amendment of Solicitation/Modification of Contract.

When complete consignment instructions are not initially known (See 247.305-10) Form 30 will be used to issue or amend consignment instructions and when necessary, to confirm consignment instructions issued telephonically, via teletype or telegram. When issued to confirm delivery instructions the Form 30 will:

(a) Be stamped or marked "CONFIRMATION" in block letters and shall specify in detail those instructions being confirmed.

(b) Contain no changes to the instructions being confirmed. The confirming Standard Form 30 shall be processed as follows:

(1) For contracts assigned for any contract administration function listed in subpart 242.3 to any office listed in DoD 4105.59-H, within five working days;

(2) For diversions of petroleum, oil and lubricants (POL) products overseas to new destinations, within 30 days of instructions being confirmed.

(3) Other contracts—

(i) Telephone—within five working days; and

(ii) Teletype or telegraph—consolidate on a monthly basis.

247.372 DD Form 1653 (JUN 88), Transportation Data for Solicitations.

DD Form 1653 which will contain recommendations to the contracting officer concerning f.o.b. terms best suited for the acquisition, and other suggested transportation provisions for inclusion in the IFB/RFP, shall be completed upon request of the contracting officer by the transportation specialist, for association with the appropriate purchase request. When appropriate, DD Form 1653 will also include information on combined port handling and transportation charges to be included in the FB/RFP in connection with export shipments.

[51 FR 46321, Dec. 23, 1986]

247.373 DD Form 1654 (JUL 88), Evaluation of Transportation Cost Factors.

DD Form 1654 allows contracting personnel to furnish basic information to the transportation office for development of transportation cost factors which shall be used by the contracting officer in the evaluation of f.o.b. origin bids or proposals. Use of the DD Form is optional.

[53 FR 46459, Nov. 17, 1988]

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

SOURCE: 54 FR 16118, Apr. 21, 1989 (interim), unless otherwise noted.

247.570 Scope.

Sections 247.570 through 247.574 set forth the Department of Defense policies and procedures for implementing the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by or destined for use by the Department of Defense. For such cargo, this constitutes an approved class deviation from FAR subpart 47.5 in its entirety. This subpart does not specifically implement the Cargo Preference Act of 1954, 46 U.S.C. 2141 (b), which while applicable to the Department of Defense, does not require DFARS coverage in view of the fact that compliance with the 1904 Act has historically resulted in DoD's far exceeding the 1954 Act's requirements for shipment by private commercial carrier.

247.571 Definitions.

As used in this subpart:

Armed services means the Army, Navy, Air Force, Marine Corps, and Defense Agencies.

Components means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication or assembly by the contractor or any subcontractor.

Foreign flag vessel means any vessel that is not a U.S.-flag vessel.

Ocean transportation means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

Subcontractor includes a supplier, materialman, distributor or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

Supplies means all property except land and interests in land that is clearly identifiable for eventual use by the armed services, or owned by the armed services, at the time of transportation by sea. It includes (but is not limited to) public works, buildings and facilities, ships, floating equipment and vessels of every character, type, and description, together with parts, subassemblies, accessories, and equipment; machine tools, material, equipment, and stores of all kinds; end items, construction materials and the components of the foregoing. An item is clearly identifiable for eventual use by the armed services if, for example, the contract documentation contains a reference to a DoD contract number, or a military destination.

U.S.-Flag vessel means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

[54 FR 16118, Apr. 21, 1989; 54 FR 22283, May 23, 1989, as amended at 54 FR 53620, Dec. 29, 1989; 55 FR 19080, May 8, 1990]

247.572 Policy.

(a) Authority Citation: 10 U.S.C. 2631.

(b) Supplies as defined in 247.571 shall be transported exclusively on U.S.-flag vessels unless:

(1) Those vessels are not available and appropriate notices are given and approvals received;

(2) The Secretary of the Navy finds that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the armed services are higher than charges to private persons for the transportation of like goods.

(c) The contracting officer shall ensure that contracts provide for the use of Government-owned vessels when the security classification prohibits the use of other than Government-owned vessels.

(d) The Cargo Preference Act of 1904 does not apply to ocean transportation of (1) products obtained for contributions to foreign assistance programs; or (2) products owned by agencies other than the Department of Defense. For these products, FAR subpart 47.5 applies.

247.573 Procedures.

247.573-1 Purchase of ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies to those acquisitions where ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing the following:

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation by sea of supplies.

(c) The contracting officer shall ascertain from each offeror whether the supplies will be transported by sea under the resulting contract (see 247.574(a)).

(1) When the successful offeror indicates in the response to the solicitation, that ocean transportation will be used, the contractor must comply with the requirements of the Cargo Preference Act of 1904.

(2) If the successful offeror's response to the solicitation provision is that the offeror does not anticipate that supplies will be transported by sea, there still remains the possibility that during contract performance the contractor will discover that ocean transportation must be used. In that event, the terms of the statute still apply to the contractor, requiring the contractor to use U.S.-flag vessels unless certain narrow conditions exist (see 247.572(b) above). The contractor must notify the Government of the changed circumstances, i.e., that it intends to use ocean transportation, and comply with the requirements of the Cargo Preference Act.

(d) When the contracting officer is notified in accordance with the clause at 252.247-7203, Transportation of Supplies by Sea, that the contractor or subcontractor considers that:

(1) No U.S.-flag vessels are available: the contracting officer shall request confirmation from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC), that no U.S.-flag vessels are available.

(2) The freight charges to the armed services, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons having no involvement in the contract: The contracting officer may waive or approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment. Prior to granting such a waiver, the contracting officer shall solicit oral or written advice from the Commander, MSC or designated representative, MSC. The Commander, MSC shall consider, as appropriate, evidence from published tariffs, industry publications, the Maritime Administration, and other available sources when advising the contracting officer whether the waiver should be granted.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable: The contracting officer shall forward a report to the Commander, MSC through the head of the contracting activity and the Director, Office of Contracts and Business Management, MSC. The report shall take into consideration that the Cargo Preference Act of 1904 is, in part, a subsidy of the U.S.-flag commercial shipping industry which starts from the premise that lower prices can be obtained from foreign shippers. Accordingly, the report should consider not only excessive profits to the vessel owner, if ascertainable, but also excessive costs (*i.e.*, costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the mandatory use of U.S.-flag vessels in extraordinarily inefficient circumstances. If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secretary of the Navy, via ASN(S&L)(CBM), for a determination.

(i) The report shall be in D&F format and include, as appropriate, an analysis of whether the cost to the armed services is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of U.S.-flag rates charged on comparable routes; efficiency of operation regardless of rate differential (*i.e.*, suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, *etc.*); and any other relevant economic and financial considerations affecting the armed services.

(ii) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

[55 FR 39971, Oct. 1, 1990]

247.573-2 Direct purchases of ocean transportation services.

(a) This subsection applies to those acquisitions where ocean transportation is the principal purpose of the contract such as Time Charters, Voyage Charters, Contracts of Affreightment, Dedicated Contractor Contracts of Affreightment, Ocean Bills of Lading, etc. These acquisitions shall be coordinated, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(b) The MSC shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with applicable laws and regulations. The Commander, MSC or designated representative is authorized to make any determination as to the availability of United States-flag vessels required to assure proper utilization.

(c) All solicitations for ocean transportation services for supplies owned by the armed services of the United States shall provide, as an evaluation factor, a preference for U.S.-flag vessels. No contract of the type described in paragraph (a) above shall be awarded for a foreign-flag vessel unless:

(1) The contracting officer determines in accordance with paragraph 247.573-1(c)(1) that no U.S.-flag vessels are available, and obtain approval of the Commander, MSC or design ed representative; or

(2) The contracting officer dete mines in accordance with paragrap 247.573-1(c)(2) that the freig charges proposed by U.S.-flag vesse to the armed services are higher tha charges to private persons for tran portation of like goods, and obtai the approval of the Commander, MS or designated representative; or

(3) The contracting officer perform the analysis and forwards the repor in accordance with subparagraph (i below, and the Secretary of the Nav determines that the freight charge for U.S.-flag vessels are excessive o otherwise unreasonable.

(i) When the contracting officer believes, based solely on economic considerations, that the freight offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer shall forward a report through the head of the contracting activity to the Commander, MSC. The report shall take into consideration the factors in paragraph 247.573(b)(3). If the Commander, MSC or designated representative concurs with the contracting officer, the report will be forwarded to the Secretary of the Navy for a determination. The report shall be in D&F format and shall include, as appropriate:

(A) An analysis of the carrier's costs in accordance with FAR subpart 15.8 or profit in accordance with DFARS subpart 215.9 including the basis for the contracting officer's conclusion that the costs are unreasonable or that the profit proposed exceeds that which the contracting officer determines is necessary to adequately motivate the contractor and compensate the contractor for the degree of risk incurred (i.e., the costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels). The report shall include, as appropriate, a description of efforts taken by the contracting officer, pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report shall be considered the referral to higher authority.

(B) An analysis of whether the cost to the armed services is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into account factors such as: the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis; a comparison of rates charged by other U.S.-flag carriers on comparable routes; efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.), and any other relevant economic and financial considerations affecting the armed services.

(C) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such differential may indicate a need for further review.

[54 FR 16118, Apr. 21, 1989; 54 FR 22283, May 23, 1989, as amended at 54 FR 53620, Dec. 29, 1989]

247.574 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 252.247-7202, Representation of Extent of Transportation of Supplies by Sea, in full text, in all solicitations other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR part 13.

(b) The contracting officer shall insert the clause at 252.247-7203, Transportation of Supplies by Sea, in all solicitations and contracts, in full text, other than those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase threshold in FAR part 13.

(c) The contracting officer shall insert the clause at 252.247-7204, Notification of Transportation of Supplies by Sea, in full text, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247-7202.

(d) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses consistent with this subpart concerning the vessels to be used.

[54 FR 16118, Apr. 21, 1989, as amended at 54 FR 53620, Dec. 29, 1989]

PART 248—VALUE ENGINEERING

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

Subpart 248.2—Contract Clauses

248.201 Clauses for supply or service contracts.

(a) *General.* (1) Supply or service contracts for spare parts and repair kits of $25,000 or more, for other than standard commercial parts, shall contain a VE incentive clause (see FAR 48.201(b)).

[52 FR 23835, June 25, 1987, as amended at 53 FR 51561, Dec. 22, 1988]

PART 249—TERMINATION OF CONTRACTS

Subpart 249.1—General Principles

Sec.
249.102 Notice of termination.
249.105 Duties of termination contracting officer after issuance of notice of termination.
249.105-1 Termination status report.
249.108 Settlement of subcontract settlement proposals.
249.108-4 Authorization for subcontract settlements without approval or ratification.
249.109 Settlement agreements.
249.109-7 Settlement by determination.
249.110 Negotiation memorandum.

Subpart 249.4—Termination for Default

249.402 Termination of fixed-price contracts for default.
249.402-3 Procedure for default.

Subpart 249.6—Contract Termination Forms and Formats

249.601 Notice of termination for convenience.

Subpart 249.70—Special Requirements

249.7001 Terminated contracts with Canadian commercial corporation.

Sec.
249.7002 Prior notification of significant contract terminations.
249.7003 Special termination costs.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46328, Dec. 23, 1986, unless otherwise noted.

Subpart 249.1—General Principles

249.102 Notice of termination.

See 243.301(a)(1)(S-70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination and amendment of the termination notice.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Termination status report.

Upon receipt of the termination notice, it is the responsibility of the contract administration office to prepare DD Form 1598, Contract Termination Status Report, and transmit two copies to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible. In addition, these reports shall be furnished on a quarterly basis for the quarters ending March, June, September, and December, within 30 days after the end of the respective quarter, and upon closing of the termination case. This reporting requirement is assigned Report Control Symbol: DD(I&L)(Q&AR) 1411.

249.108 Settlement of subcontract settlement proposals.

249.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) However, no industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to FAR 45.6.

(e) However, industrial plant equipment, the cost of which is included in determining the amount of the claim, shall not be disposed of prior to screening pursuant to FAR 45.6.

249.109 Settlement agreements.

249.109-7 Settlement by determination.

See 243.301(a)(S-70) for use of the Standard Form 30 (SF-30), Amendment of Solicitation/Modification of Contract, to reflect a determination of the amount due.

249.110 Negotiation memorandum.

(a)(1) *Format for termination contracting officer's settlement memorandum for fixed-price type contract terminated for convenience of the Government.* This memorandum shall be addressed to a reviewing authority or the file as appropriate. Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

PART I—GENERAL INFORMATION

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. *Description of terminated contract.*

a. Date of contract and contract number.

b. Type of contract (*e.g.*, fixed price, or fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement designation or other special provisions).

3. *Termination notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.

c. State whether termination notice was amended, and if so, explain.

d. Statement whether contractor stopped work on effective termination date. If he did not, furnish details. Also state whether subcontracts were terminated promptly by the contractor.

c. Statement as to diversion of commom items and return of goods to suppliers, if any.

f. Furnish information as to contract performance and timely deliveries on part of contractor.

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. *Date and amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Basis of claim.* State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.

3. *Examination of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

PART III—TABULAR SUMMARY OF CONTRACTOR'S CLAIM

Prepare a summary substantially as follows:

(*Where field recommendations are to be considered, expand the format to include such recommendations.*)

AUDITOR'S RECOMMENDATION

	Contractor's proposal	Dollars accepted	Cost questioned	Unresolved items	TCO negotiated amount
Item claimed:					
1. Contractor's costs as set forth on Settlement Proposal, Metals, Raw materials, etc					
Total					
2. Profit					
3. Settlement Expense					
4. Total					
5. Settlement with Subs					
6. Acceptable Finished Product					
7. Gross Total					
8. Disposal and Other Credits					
9. Net Settlement					
10. Partial, Progress & Advance Payments					
11. Net Payment Requested					

PART IV—DISCUSSION OF SETTLEMENT

1. *Contractor's cost.*

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profits included therein.

c. Comment on any important adjustments made to costs or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes which are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. *Profit.* Explain the basis and factors considered in arriving at a fair profit.

3. *Settlement expenses.* Comment on and summarize those expenses not included in audit review.

4. *Subcontractor's settlements.*

NUMBER OF SETTLEMENTS . . . NET AMOUNT

Approved by Termination Contracting Officer ————————————

Concluded by contractor under delegation of authority.

No Cost Settlements ————————

Total ————————————

5. *Partial payments.* Furnish total amount of partial payments, if any.

6. *Progress or advance payments.* Furnish total of unliquidated amounts, if any.

7. *Claims of the Government against the contractor included in settlement agreement reservations.* List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

8. *Assignments.* List any assignments, giving name and address of assignee.

9. *Disposal credits.* Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. *Plant clearance.* State whether all plant clearance action has been complete and all inventory sold, retained or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

11. *Government property.* State whether all Government property has been accounted for.

12. *Special tooling.* If involved, furnish comment on disposition.

13. *Summary of settlement.* Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION

	Amount claimed	Allowed amount
Prime Contractor's Charges (before disposal credits)		
Plus: Subcontractor charges (after disposal credits)	$	
Gross Settlement		
Less: Disposal Credits—Prime	$ XXXXX	$
Net Settlement	$	
Less: Prior Payment Credits (This Settlement)		
Previous Partial Settlements		
Other Credits or Deductions		
Total		$
Net Payment		$
Total Contract Price (Complete Termination)		
CPI* (for partial termination)		$
Less: Total Payments to date		
Net Payment from this Settlement		
Fund Reserved for Reservations		
Final Contract Price (Terminated Portion for partial termination)		
Reduction in Contract Price		$

14. *Exclusions.* Describe any proposed reservation of rights to the Government or to the contractor.

PART V—RECOMMENDATION

1. *Recommendation.* Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

2. *Signature.* The Contracting Officer will sign and date the memorandum.

(End of Memorandum)

(2) *Format for termination contracting officer's settlement memorandum for cost-reimbursement type contracts.* This memorandum shall be addressed to a reviewing authority or the file as appropriate. This format may be appropriately modified and used to cover subcontract settlements.

PART I—GENERAL INFORMATION

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of contractor and Government personnel who participated in the negotiation.

2. *Description of terminated contract.*

a. Date of contract and contract number.

b. Type of contract.

c. General description of contract items.

d. State total contract cost and fee data if complete termination.

e. Furnish reference to the contract termination clauses (cite FAR/DoD FAR Supplement —— or other special provisions).

3. *Termination notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. *Date and amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Examination of proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

PART III—TABULAR SUMMARY OF SETTLEMENT

1. *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

2. *Comments.* Furnish comments in amplification of tabular summaries.

a. Summary of Final Settlement (see Attachment A).

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, exlain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the author, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:

Approved by Termination Contracting Officer—

Concluded by contractor under delegation of authority.

No Cost Settlements ————————

Total————————————

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

	Number settlements	Total dollar amount
Gross Settlement	$	
Less: Disposal credits		
Net Settlement		
Less: Prior Payments		
Other credits or deductions		
Total		
Net Payment	$	
Total contract estimated cost plus fixed fee		
Less: Net settlement		
Estimated reserve for exclusions		
Final contract price (Consisting of $____ for reimbursement of costs and $____ for adjusted fixed fee) $____		
Reduction in contract price (credit)		

(13) *Plant clearance.* Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1414, Inventory Disposal Report).

(14) *Government property.* State whether all Government property has been accounted for.

PART IV—RECOMMENDATION

1. *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the contractor and as such should be approved.

2. *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

SUMMARY OF SETTLEMENT—COST TYPE CONTRACT *

Contract No. ________

Termination No. ________

	Amount claimed	Amou allowed
1. Previous Reimbursed Costs—Prime and Subs		
2. Previous Unreimbursed Costs	$	$
3. Total Cost Settlement		
4. Previous Fees Paid—Prime	$	$
5. Previous Fees Unpaid—Prime	$	$
6. Total Fee Settlement		
7. Gross Settlement	$	$
	$	
Less: Deductions not reflected in Items 1-7		
a. Disposal credits	$	
b. Other charges against contractor arising from contract	$	
8. Net Settlement		
Less: Prior Payment Credits		$
9. Net Payment		
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		$
Aggregate gross amount of previous settlements		
Aggregrate net amount of previous partial settlements		$
Aggregrate net payment provided in previous partial settlements		$
Aggregrate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements		$
		$

* Use applicable portion for partial settlement

ATTACHMENT A

UNREIMBURSED COSTS SUBMITTED ON SF 1437 [1]

Costs	Amounts claimed by contractor's proposal	Auditor's Recommendation		TCO's Computation
		Cost Questioned	Unresolved items	
1. Direct material 2. Direct labor 3. Indirect factory expense 4. Dies, jigs, fixtures and special tools 5. Other costs 6. General and administrative expense 7. Fee 8. Settlement expense 9. Settlements with subs				
10. Total costs (Items 1-9)				

[1] Expand the format to include recommendations of technical personnel as required.

ATTACHMENT B

(End of Memorandum)

[51 FR 46326, Dec. 23, 1986, as amended at 53 FR 36248, Sept. 20, 1988]

Subpart 249.4—Termination for Default

249.402 Termination of fixed-price contracts for default.

249.402-3 Procedure for default.

See 243.301(a)(1)(S-70) for use of the Standard Form 30 (SF 30), Amendment of Solicitations/Modification of Contract, in providing notice of termination.

Subpart 249.6—Contract Termination Forms and Formats

249.601 Notice of termination for convenience.

See 243.301(a)(1)(S-70) for use of the Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, in providing notice of termination.

Subpart 249.70—Special Requirements

249.7001 Terminated contracts with Canadian commercial corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (1) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (see Appendix T.201, Canadian Agreements); (2) policies in T.201 and Part 249; and (3) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination proposal of Canadian Commercial Corporation shall be submitted in the form prescribed in FAR 49.602 and shall reflect the amount of settlements with subcontractors. The letter transmitting the proposal shall certify that (1) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (2) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of FAR 49.603.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to T.201. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of FAR 45.6. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination proposals submitted by the United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASR, Cleveland) for settlement in accordance with this Part and T.201. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination proposal submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

249.7002 Prior notification of significant contract terminations.

(a) Prior Defense Department clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of each Department through its liaison point designated in (d) below. In a labor surplus area, a lesser number than 100 may be significant, and if so, such information release should be similarly cleared.

(b) The following information will be submitted to the appropriate Departmental liaison point:

(1) Contract number, date, type of contract;

(2) Name of company;

(3) Nature of contract or end item;

(4) The reasons for the termination;

(5) Contract price of items terminated;

(6) Total number of contractor employees, involved including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community (identify); identify area labor category; whether contractor is large or small business, and include any known impact on hardcore disadvantaged employment programs;

(8) Total number of subcontractors involved as well as the impact in this area, if known; and

(9) Draft (unclassified) of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The Departmental liaison points for prior clearance to release information on significant terminations are as follows:

Army—OSA, OCLL, (SACLL), ASA (I&L) (copy)
Navy—Chief of Legislative Affairs (OLA-N)
Air Force—HQ USAF (AF/RDC)
Defense Logistics Agency—DLA-PR
Defense Communications Agency—Contract Management Division (Code 260)
Defense Nuclear Agency—Chief, Office of Procurement, OATR
Defense Mapping Agency—DMA/LO

(e) Liaison offices of Departments will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination cost.

(f) This reporting requirement is assigned Report Control Symbol: DD(I&L)(AR) 1412.

[51 FR 46326, Dec. 23, 1986, as amended at 53 FR 38248, Sept. 29, 1988]

249.7003 Special termination costs.

(a) The clause at 252.249-7000, Special Termination Costs, is authorized for use in an incrementally funded contract when:

(1) The contract term is two years or more;

(2) The contract is estimated to require total RDT&E financing in excess $25 million or total production investment in excess of $100 million;

(3) Adequate resources are available within existing appropriated amounts to cover the contingent reserved liability for special termination costs in the event of contract termination; and

(4) The use of the clause in the contract is approved by the (Secretary of the Department concerned or designee. The clause may be used in circumstances other than those in (1) and (2) above when approved by the Secretary of the Department concerned or designee. Any addition to the categories of special termination costs listed in paragraph (a) (1) through (4) of the clause in 252.249-7000 shall be processed in accordance with 201.404.

(b) The contractor and the contracting officer shall agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Such amount shall be inserted in the clause.

(c) A provision allowing for negotiated adjustments of the amount reserved for special termination costs may be inserted as paragraph (d) of the clause. Contract provisions for periodic adjustments by mutual agreement of the parties may be established based on, among other things, (1) set time periods within the contract, (2) the Government's incremental assignment of funds to the contract, or (3) the time when certain performance milestones are accomplished by the contractor. Provisions for such adjustments may be considered desirable in contracts containing unusually long performance periods, or in contracts where the contractor's cost risk associated with the contingent special termination costs, in the event of Government termination, fluctuates extensively over the period of the contract, depending on the scope of work to be performed during a certain period of the contract, or the amount of funds to be assigned to the contract during any one increment.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

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250.7000 Scope.
250.7001 Act of August 28, 1958, as amended.
250.7002 Executive Order 10789 of November 14, 1958.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46330, Dec. 23, 1986, unless otherwise noted.

250.001 Definitions.

Agency head, as used within this part by the Department of Defense, does not include heads of defense agencies.

Secretarial level, as used within this part by the Department of Defense, means an official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force, and a Contract Adjustment Board established by the Secretary concerned.

Subpart 250.1—General

250.103 Deviations.

For purposes of this section, "defense agencies" include the Departments of the Army, Navy, and Air Force, as well as agencies within the Office of the Secretary of Defense.

250.104 Reports.

Departmental and agency supplements will designate officials responsible for preparing and processing the reports required by this section.

250.105 Records.

(S-70) *Record of requests and dispositions*—(1) *General.* In order that adequate records of actions by each Department pursuant to the Act may be maintained, 50.303(S-71) requires the preparation of a preliminary record when each request is filed for an adjustment under FAR subpart 50.3, and 250.306(S-70) requires the preparation of a final record indicating the disposition of the request. This paragraph describes in detail the information which should be included in these records. A suggested format for the records is shown in 250.105(S-70)(4). It is designed so that the information required for the preliminary and final record with respect to each request may be combined on the same form. Departmental and agency supplements will designate the offices or officials responsible for preparing, submitting, receiving, and maintaining all records required by this part. Records required by this supplement shall be maintained in the Departments of the Army, Navy, and Air Force by their respective Contract Adjustment Boards and in the Headquarters of the defense agencies.

(2) *Preliminary records.* Each preliminary record prepared pursuant to 250.303(S-71) should contain the following information:

(i) *Type of record.* The fact that the record is a preliminary record should be indicated.

(ii) *Date of contractor's request.* The date on the face of the contractor's request for adjustment should be inserted.

(iii) *Date received by government.* The date the request for adjustment is received in any Government office to which the contractor may properly submit his request should be inserted.

(iv) *Name and address of contractor.* The full and correct name and address of the contractor filing the request should be inserted. If the contractor is a small business, this fact should be indicated.

(v) *Name and address of the contractor's representative, if any.* If a particular named person (employee, attorney, etc.) is the point of contact with the contractor, his full name and address should be inserted.

(vi) *Cognizant contracting officer or office.* The contracting officer administering the contract for which an adjustment was requested or, if none, the contracting officer or office cognizant of the request should be inserted.

(vii) *Procuring activity.* The name of the procuring activity with jurisdiction over the contracting officer or official referred to in (vi) above, should be inserted.

(viii) *Property or service involved.* A brief description of the item being procured or services being rendered should be inserted.

(ix) *Extent of performance as of date of request.* A brief indication, as of the date of the request, of the degree of completion of the contract should be inserted; for example, 50 percent completed, or performance not yet begun; if work is completed, indicate date of completion and whether final payment has been made.

(x) *Contract number and date.* The identifying numbers and dates of the contracts for which an adjustment is requested should be inserted. If there is no contract, then the word "None" should be inserted. If the question arises under a letter of intent, then that fact and the date of such letter should be inserted.

(xi) *Award procedure.* The procedure under which the contract was awarded, e.g., formal advertising, negotiation, or sealed bidding, should be indicated. The specific authority, if applicable, should be indicated; for example: "Neg. 10 U.S.C. 2304(a)(14)."

(xii) *Type of contract.* The type of contract involved (see FAR Part 16) should be inserted: e.g., FFP (firm fixed-price), FPI (fixed-price incentive), CPFF (cost-plus-fixed-fee), or T&M (time and materials).

(xiii) *Category of case.* Whether the request involves an amendment without consideration, a mistake, or an informal commitment should be indicated. If the case involves two or more categories, each should be indicated; however, the most significant category involved should be listed first.

(xiv) *Amount or description of request.* If the request is expressed in dollars, as a change in price, then that fact should be inserted as follows: "$5,250 increase" or "$5,250 decrease." If the request seeks an adjustment which cannot be expressed in monetary terms, then a brief description of it should be inserted, such as "Cancellation" or "Modification of Terms." The fact that an adjustment is not easily expressed in dollar terms should not deter an estimate if such an estimate is made by the contractor in his request.

(xv) *Date of this record.* The date on which the record is signed and forwarded should be inserted.

(xvi) *Signature.* The record should be signed by an authorized representative of the reporting authority.

(3) *Final records.* Each final record prepared pursuant to 250.306-(S-70) should contain the information listed in (S-70)(2) (ii) through (xvi) above, and, in addition, should contain the following information:

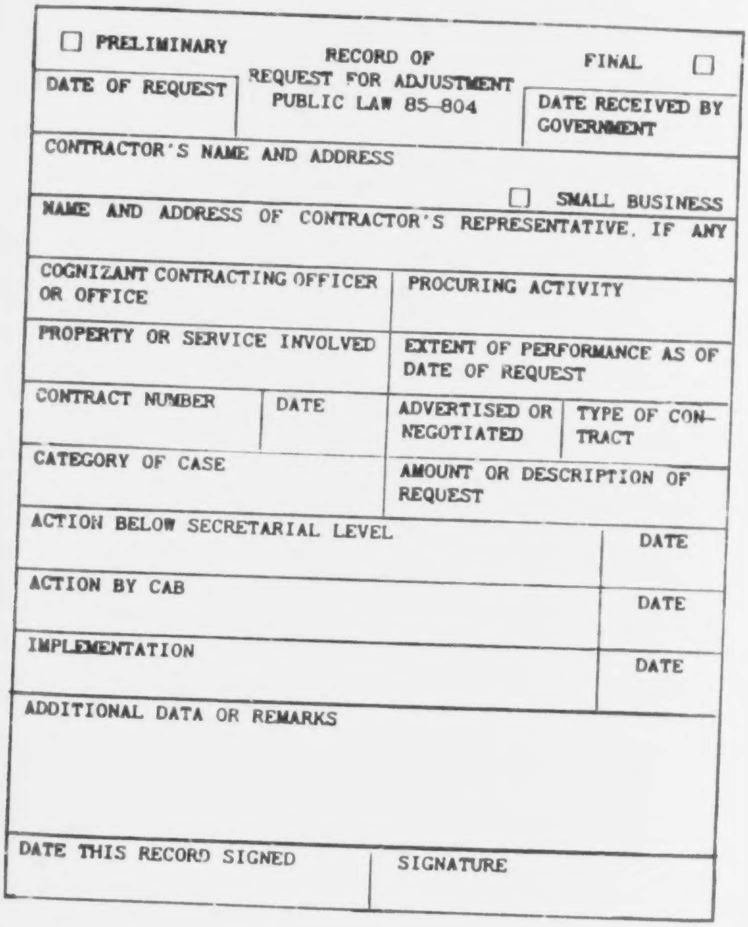
(i) *Type of record.* The fact that the record is a final record should be indicated.

(ii) *Action below secretarial level.* The disposition of the case, the office which took action, and the date thereof should be inserted. The disposition should be indicated as: "withdrawn," "denied," "approved," or "forwarded." If the request was approved in whole or in part, the dollar amount or nature of the action should be indicated in a manner similar to that described in 250.105(S-70)(2)(xiv). The date should correspond with the date of the Memorandum of Decision or of the letter forwarding the request to the Board.

(iii) *Action by contract adjustment board and date.* The disposition of the case by the Contract Adjustment Board and the date thereof should be indicated in a manner similar to that described in (2) above.

(iv) *Implementation and date.* The contractual action or correspondence which implements the decision of the approving authority or of the Board should be inserted as follows: "amendment," "new contract," or "letter of denial."

(4) *Sample format.* The preliminary and final records described in (2) and (3) above may be prepared in a format substantially as follows:



☐ PRELIMINARY	RECORD OF REQUEST FOR ADJUSTMENT PUBLIC LAW 85-804		FINAL ☐
DATE OF REQUEST		DATE RECEIVED BY GOVERNMENT	
CONTRACTOR'S NAME AND ADDRESS ☐ SMALL BUSINESS			
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY			
COGNIZANT CONTRACTING OFFICER OR OFFICE		PROCURING ACTIVITY	
PROPERTY OR SERVICE INVOLVED		EXTENT OF PERFORMANCE AS OF DATE OF REQUEST	
CONTRACT NUMBER	DATE	ADVERTISED OR NEGOTIATED	TYPE OF CONTRACT
CATEGORY OF CASE		AMOUNT OR DESCRIPTION OF REQUEST	
ACTION BELOW SECRETARIAL LEVEL			DATE
ACTION BY CAB			DATE
IMPLEMENTATION			DATE
ADDITIONAL DATA OR REMARKS			
DATE THIS RECORD SIGNED		SIGNATURE	

Subpart 250.2—Delegation of and Limitations on Exercise of Authority

250.201 Delegation of authority.

(b) Authority to approve actions under FAR subpart 50.4-Residual Powers, obligating $50,000 or less may not be delegated below the level of the Head of the Contracting Activity (but see FAR 50.201(d) for indemnification authority).

(S-70) *Authority delegated*—(1) *Departments of the Army, Navy, and the Air Force.* Delegations and levels of authority for actions by the Departments of the Army, Navy, and Air Force under the Act and the Executive Order are contained in their departmental supplements.

(2) *Defense agencies.* Subject to the restrictions on delegations of authority in FAR 50.201 and 250.201 above, the Directors of the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the National Security Agency, and the Defense Mapping Agency may exercise and further delegate authority under the Act and the Executive Order. Levels of such authority are contained in defense agency supplements. Recommendations for approval of actions in excess of the authority delegated by this paragraph will be submitted to the Assistant Secretary of Defense, Acquisition and Logistics.

(3) *Approvals.* Authorities may be delegated and redelegated only with the written approval of the Secretary or Director concerned.

250.202 Contract adjustment boards.

(S-70) *Organization and authority.*

(1) *Organization.* A Contract Adjustment Board has been established within the Departments of the Army, Navy, and Air Force by the Secretary. Such Boards consist of a Chairman and not less than two nor more than six other members, one of whom may be designated the Vice-Chairman. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total Board membership constitutes an action of the Board. Alternates may be appointed to act in the absence of members.

(2) *Authority.* The Contract Adjustment Board in each Department has been given authority to approve, authorize and direct appropriate action under the standards set forth in FAR subpart 50.3 in any case submitted to it, by an official designated to submit cases, and to make all determinations and findings which are necessary or appropriate. When deemed necessary to the exercise of the foregoing authority, such Boards may authorize any appropriate action not precluded by FAR 50.203, including the modification or release of any obligations.

Subpart 250.3—Contract Adjustments

250.303 Contractor requests.

(S-70) *Filing of requests.* If a request is filed with an administrative contracting officer, it shall be forwarded promptly to the procuring contracting officer for appropriate action. If such filing is impracticable, requests will be deemed to be properly filed if filed with the following addresses for forwarding to the cognizant contracting officer:

(1) In the Army: The Head of Contracting Activity listed in part 2 appearing to be cognizant of the contract or commitment involved;

(2) In the Navy: The Head of Contracting Activity listed in part 2 appearing to be cognizant of the contract or commitment involved;

(3) In the Air Force: Commander Air Force Logistics Command ATTN: PPC Wright-Patterson Air Force Base, Ohio;

(4) In the Defense Logistics Agency: Commanders of the Defense Supply Centers concerned;

(5) In the Defense Communications Agency: Director, DCA ATTN: Code 260;

(6) In the Defense Nuclear Agency: Director, DNA, ATTN: OAPR;

(7) In the National Security Agency: Director, NSA; and

(8) In the Defense Mapping Agency: Director, DMA, ATTN: LO.

(S-71) *Record of request.* At the time the request is filed, a preliminary record as decribed in 250.105(S-70)(2) shall be prepared by, and forwarded within 30 days after the close of the month in which prepared, to those officials designated pursuant to 250.105(S-70)(1).

250.305 Processing cases.

(S-70) *Processing cases by contract adjustment boards*—(1) *Statement to board.* Cases to be submitted for consideration of the cognizant Contract Adjustment Board shall be forwarded by means of a letter signed by the officer or official responsible for the case. The letter shall state:

(i) The nature of the case;

(ii) The basis for the Board's authority to act;

(iii) The findings of fact essential to the case (see FAR 50.304) arranged chronologically with cross references to supporting enclosures;

(iv) The conclusions drawn from applying the standards for deciding cases, as set forth in FAR subpart 50.3, to the findings of fact; and

(v) The disposition recommended, and, if contractual action is recommended, the opinion of the signer that such action will facilitate the national defense.

The letter shall enclose copies of the contractor's request, the evidentiary materials, and all indorsements, reports and comments of cognizant Government officials. The letter and enclosure shall be in duplicate.

(2) *Amendments without consideration under FAR 50.302-1(a).* A letter to the Board recommending an amendment without consideration under the standards of FAR 50.302-1(a) should, in addition to the requirements of paragraph (a) above, ordinarily cover, with supporting data as appropriate, the findings and conclusions with respect to all of the items set forth in FAR 50.304(b) and, in addition, findings as to:

(i) The contractor's performance record, including the quality of product, rate of production and promptness of deliveries;

(ii) The importance to the Government, particularly to the operating forces, of the performance of the contract by the contractors and the importance of the contractor to the national defense;

(iii) Forecast of future contracts with the contractor; and

(iv) Other available sources of supply for the supplies or services covered by the contract, and the time and cost of having contract performance completed by such other sources.

(3) *Forwarding to boards.* Cases to be submitted to the Boards will be forwarded through channels in accordance with departmental supplements.

(4) *Processing by boards.* Upon receipt of cases, the Contract Adjustment Boards, each in accord with its own procedures, shall render decisions as expeditiously as practicable. The chairman shall sign a Memorandum of Decision disposing of the case, which shall be dated and shall contain the information required by FAR 50.306. The Memorandum of Decision shall omit any information classified "Confidential" or higher. The Board's decision will be communicated to the appropriate officer or official for implementing action.

250.306 Disposition.

(S-70) *Record of disposition.* (1) In each case when the request for relief is denied or approved below the Secretarial level, each of the following documents shall be submitted to the office designated pursuant to 250.105(S-70)(1) within 30 days after the close of the month during which it is executed:

(i) Two copies of the Memorandum of Decision;

(ii) One copy of the contractual document implementing any decision approving contractual action (not to be submitted in the case of the Army); and

(iii) One copy of a final record, as prescribed in 250.105(S-70)(3) prepared by the office designated pursuant to 250.105(S-70)(1).

(2) When a Contract Adjustment Board decision is implemented, the documents listed in (S-70)(1) (ii) and (iii) above shall be prepared and submitted to the Board by the activity which forwarded the case to the Board.

Subpart 250.4—Residual Powers

250.403-70 Indemnification under contract involving both research and development and work that cannot be so classified.

Certain contracts require a substantial amount of research and developmental work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Pub. L. 85-804 may be used. In such cases, the use of Pub. L. 85-804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with FAR subpart 50.4. Indemnification pursuant to the authority of 10 U.S.C. 2354 is covered by 235.070.

Subpart 250.70—Act and Executive Order

250.7000 Scope.

This subpart sets forth in full the Act and Executive Order.

250.7001 Act of August 28, 1958, as amended.

(Pub. L. 85-804); 72 Stat. 972, as amended by 87 Stat. 605 (1973); 50 U.S.C. 1431-1435, as amended:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein. The authority conferred by this section may not be utilized to obligate the United States in any amount in excess of $25,000,000 unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60 day period, a resolution disapproving such obligation. For purposes of this section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60 day period.

Sec. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) The use of the cost-plus-a-percentage-of-cost system of contracting;

(b) Any contract in violation of existing law relating to limitation of profits;

(c) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) The waiver of any bid, payment, performance, or other bond required by law;

(e) The amendment of a contract negotiated under section 2304(a)(15), Title 10, United States Code, or under section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, or;

(f) The formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

Sec. 3(a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

Sec. 4(a) Every department and agency acting under authority of this Act shall, by

March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) Name the contractor;

(2) State the actual cost or estimated potential cost involved;

(3) Describe the property or services involved; and

(4) State further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

Sec. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

250.7002 Executive Order 10789 of November 14, 1958.

(23 FR 8897) as amended by Executive Order 11051, dated 27 September 1962, Executive Order 11382 of November 28, 1967, and Executive Order 11610 of July 22, 1971:

AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

PART I—DEPARTMENT OF DEFENSE

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

(a) The limitation in paragraph 1 to amounts appropriated and the contract authorization provided therefor shall not apply to contractual provisions which provide that the United States will hold harmless and indemnify the contractor against any of the claims or losses set forth in subparagraph (b), whether resulting from the negligence or wrongful act or omission of the contractor or otherwise (except as provided in subparagraph (b)(2)). This exception from the limitations of paragraph 1 shall apply only to claims or losses arising out of or resulting from risks that the contract defines as unusually hazardous or nuclear in nature. Such a contractual provision shall be approved in advance by an official at a level not below that of the Secretary of a military department and may require each contractor so indemnified to provide and maintain financial protection of such type and in such amounts as is determined by the approving official to be appropriate under the circumstances. In deciding whether to approve the use of an indemnification provision and in determining the amount of financial protection to be provided and maintained by the indemnified contractor, the appropriate official shall take into account such factors as the availability, cost and terms of private insurance, self-insurance, other proof of financial reponsibility and workmen's compensation insurance. Such approval and determination, as required by the preceding two sentences, shall be final.

(b)(1) Subparagraph (a) shall apply to claims (including reasonable expenses of litigation and settlement) or losses, not compensated by insurance or otherwise, of the following types:

(A) Claims by third persons, including employees of the contractor, for death, personal injury, or loss of, damage to, or loss of use of property;

(B) Loss of, damage to, or loss of use of property of the contractor;

(C) Loss of, damage to, or loss of use of property of the Government;

(D) Claims arising (i) from indemnification agreements between the contractor and a subcontractor or subcontractors, or (ii) from such arrangements and further indemnification arrangements between subcontractors at any tier, *provided* that all such arrangements were entered into pursuant to regulations prescribed or approved by the

Secretaries of Defense, the Army, the Navy, or the Air Force.

(2) Indemnification and hold harmless agreements entered into pursuant to this subsection, whether between the United States and a contractor, or between a contractor and a subcontractor, or between two subcontractors, shall not cover claims or losses caused by the willful misconduct or lack of good faith on the part of any of the contractor's or subcontractor's directors or officers or principal officials which are (i) claims by the United States (other than those arising through subrogation) against the contractor or subcontractor, or (ii) losses affecting the property of such contractor or subcontractor. Regulations to be prescribed or approved by the Secretaries of Defense, the Army, the Navy or the Air Force shall define the scope of the term "*principal officials*".

(3) The United States may discharge its obligation under a provision authorized by subparagraph (a) by making payments directly to subcontractors or to third persons to whom a contractor or subcontractor may be liable.

(c) A contractual provision made under subparagraph (a) that provides for indemnification must also provide for—

(1) Notice to the United States of any claim or action against, or of any loss by, the contractor or subcontractor which is covered by such contractual provision; and

(2) Control or assistance by the United States, at its election, in the settlement or defense of any such claim or action.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, that the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) Name the contractor;

(b) State the actual cost or estimated potential cost involved;

(c) Describe the property or services involved; and

(d) State further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this

order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. Except as provided in the Act of September 1966 (80 Stat. 850), contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts. Before exercising the authority provided in the Act of September 27, 1966 (80 Stat. 850), the Secretaries of Defense, the Army, the Navy, or the Air Force, or their designees, shall first determine that all reasonable efforts have been made to include the clause prescribed above and that alternate sources of supply are not reasonably available.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) The use of the cost-plus-a-percentage-of-cost system of contracting;

(b) Any contract in violation of existing law relating to limitation of profits of fees;

(c) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) The waiver of any bid, payment, performance, or other bond required by law;

(e) The amendment of a contract negotiated under section 2304(a)(15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) The formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1101), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1-14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury
Department of the Interior
Department of Agriculture
Department of Commerce
Department of Transportation
Atomic Energy Commission
General Services Administration
National Aeronautics and Space Administration
Tennessee Valley Authority
Government Printing Office

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

DWIGHT D. EISENHOWER

PART 251—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 251.1—Contractor Use of Government Supply Sources

Sec.
251.100 Scope of subpart.
251.102 Authorization to use government supply sources.
251.103 Ordering from government supply sources.
251.106 Title.
251.107 Contract clause.

Subpart 251.2—Contractor Use of Interagency Motor Pool Vehicles

251.202 Authorization.
251.205 Contract clause.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

SOURCE: 51 FR 46335, Dec. 23, 1986, unless otherwise noted.

Subpart 251.1—Contractor Use of Government Supply Sources

251.100 Scope of subpart.

FAR subpart 51.1 and this subpart are applicable to the acquisition of supplies to be delivered in the United States, its possessions, or Puerto Rico. (The use of GSA sources by grantees is not authorized.)

251.102 Authorization to use government supply sources.

(e) The following is the form of authorization to the contractor:

Subject: Authorization to Purchase from Government Supply Sources.

________ (Contractor's Name)
________ (Address)

1. You are hereby authorized to utilize Government sources in performing Contract No. ____ for the Department of ________ as follows:

(Insert applicable purchasing authority given to the contractor.)

2.a. Purchase Orders Under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules. Orders will be placed in accordance with the terms and conditions of the attached Schedule(s) and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contractor) and the order shall contain the following statement:

This order is placed under written authorization from ______ dated ______ (* ______). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule or Personal Property Rehabilitation Price Schedule contract, the latter will govern.

b. Requisitioning from GSA or DoD. Orders will be placed in accordance with this authorization and, as appropriate, the:

(1) Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) (GSA FEDSTRIP Operating Guide: FPMR 101-26.2 (41 CFR 101-26.2)). This guide is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402; or

(2) Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4000.25-1-M). This manual is available from the Defense Logistics Agency, ATTN: DLA-XPD., Bldg. 6, Dr. 21, Cameron Station, Alexandria, VA 22304-6100. Orders shall include the activity address code cited in paragraph 5 below. Bills will not be issued by Government supply sources until after the supplies have been shipped. Payment shall be made promptly upon receipt of billings.

3. Insert other provisions, as necessary.

4. This authority hereby granted is not transferable or assignable.

5. The DoD Activity Address Directory (DoDAAD) (DoD 4000.25-6-M) **Activity Address Code to which this Authorization applies is ______

6. This authorization expires ______

(Contracting Officer) ________

* Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

** The sponsoring service assumes responsibility for monitoring and controlling all activity address codes utilized in the letters of authority.

(e)(3)(ii) In addition to the procedure and form authorized by FAR 51.102(e)(3)(ii), contractors are also authorized to use DD Form 1155 when requisitioning from the VA.

[51 FR 46335, Dec. 23, 1986, as amended at 55 FR 19080, May 8, 1990]

251.103 Ordering from government supply sources.

(b) "Contracting agency" as used in FAR 51.103(b) shall be construed to mean the contracting officer.

251.106 Title.

(b) With DoD, title to property having an acquisition cost of $5,000 or less shall vest in the contractor under the circumstances prescribed in FAR 51.106(b).

251.107 Contract clause.

The contracting officer shall insert the clause at 252.251-7000, Ordering from Government Supply Sources, in solicitations and contracts which include the clause at FAR 52.251-1.

Subpart 251.2—Contractor Use of Interagency Motor Pool Vehicles

251.202 Authorization.

(a)(2) See FAR 28.307-2(c), and FAR 28.308 and 228.001 for policy on contractor insurance and self-insurance, respectively, and FAR 31.205-19 for allowability of insurance costs.

(a)(5) Paragraph (e) of the clause at 252.251-7001 satisfies the requirement of FAR 51.202(a)(5) for the written statement required by that paragraph.

251.205 Contract clause.

The contracting officer shall insert the clause at 252.251-7001, Use of Interagency Motor Pool Vehicles and Related Services, in solicitations and contracts which include the clause at FAR 52.251-2.

EDITORIAL NOTE: This listing is provided for information purposes only. It is compiled and kept up-to-date by Department of Defense.

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